

TOWN OF CUMBERLAND
DEPARTMENT OF PUBLIC WORKS



BIDDING and CONTRACT DOCUMENTS

FOR THE PERFORMANCE OF

**CUMBERLAND LIBRARY HAYDEN CENTER
ROOF AND WALL LEAKAGE REPAIR AND WATERPROOFING**

OCTOBER 2015

DEPARTMENT OF PUBLIC WORKS
ENGINEERING DEPARTMENT
TOWN HALL - 45 BROAD STREET
CUMBERLAND, RHODE ISLAND 02864

TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
<u>0000 - Invitation to Bid</u>	00000- 1
<u>00100- Information for Bidders</u>	
1. Receipt and Opening of Bids	00100- 1
2. Preparation of Bid	00100- 1
3. Telegraphic Modification	00100- 1
4. Qualifications of Bidder	00100- 1
5. Bid Security	00100- 1
6. Liquidated Damages for Failure to Enter into Contract	00100- 1
7. Time of Completion and Liquidated Damages	00100- 1
8. Conditions of Work	00100- 2
9. Addenda and Interpretations	00100- 2
10. Security for Faithful Performance	00100- 2
11. Power of Attorney	00100- 2
12. Laws and Regulations	00100- 2
13. Obligation of Bidder	00100- 2
14. Uncertainty of Quantities	00100- 2
15. Items not listed in the Bid	00100- 3
16. Balanced Bidding	00100- 3
17. Rhode Island Sales and Use Tax	00100- 3
18. Labor Regulations	00100- 3
<u>00200 - Proposal</u>	
1. Proposal Statement	00200- 1
2. Proposal Summary	00200- 2
3. Certificate of Corporate Acknowledgement	00200- 5
4. References	00200- 6
5. Bid Bond	00200- 7
<u>00500 Contract</u>	
1. Contract Agreement	00500- 1
2. Performance Bond	00500- 2
3. Payment Bond	00500- 3
4. Notice of Award	00600- 1
5. Notice to Proceed	00600- 2
6. Change Order	00600- 3
7. Certificate of Compliance	00600- 4
<u>00700 - General Conditions</u>	
1. Definitions	00700- 1
2. Preliminary Matters	00700- 3
3. Contract Documents: Intent, Amending, Reuse	00700- 5
4. Bonds and Insurance	00700- 8
6. Contractor's Responsibilities	00700- 10
7. Other Work	00700- 17
8. Owner's Responsibilities	00700- 18
9. Engineer's Status during Construction	00700- 19
8. Changes in the Work	00700- 21

TABLE OF CONTENTS (cont.)

<u>SECTION</u>	<u>PAGE</u>
9. Change of Contract Price	00700- 22
10. Change of Contract Time	00700- 26
11. Warranty and Guarantee; Tests and Inspections; Correction, Removal or Acceptance of Defective Work	00700- 26
12. Payments to Contractor and Completion	00700- 29
13. Suspension of Work and Termination	00700- 34
14. Arbitration	00700- 36
15. Miscellaneous	00700- 37
 <u>Supplementary Conditions</u>	
1. Insurance	00800- 1
2. Sales Tax	00800- 2
3. Retainage	00800- 2
4. Owner's Inspection	00800- 2
5. Equal Employment Opportunity Program	00800- 2
6. Responsibilities of the Contractor	00800- 4
7. Sanitary Waste	00800- 4
8. Intoxicating Liquors	00800- 4
9. Abbreviations	
 <u>Technical Specifications</u>	
Performance Specification – Leakage Repair and Waterproofing	07100-1
 <u>Appendix</u>	
Existing Conditions Photographs	

INVITATION TO BID

BID No. 2015-1026-12

Notice is hereby given that the

TOWN OF CUMBERLAND, RHODE ISLAND

Will accept bid proposals for the performance of

**CUMBERLAND LIBRARY HAYDEN CENTER
ROOF and WALL LEAKAGE REPAIR and WATERPROOFING**

Sealed bids for the project will be received at the Office of the Finance Director; Town Hall, 45 Broad Street, Cumberland, Rhode Island 02864 on **Thursday, November 12, 2015 at 11:00 AM**, and then at said office, publicly opened and read aloud in the Town Council Chambers. Bidding and Contract Documents may be examined and obtained at the Town of Cumberland Finance Department, Town Hall, 45 Broad Street, Cumberland, Rhode Island during normal working hours (8:30 AM to 4:30 PM) on **November 2, 2015**.

A Pre-Bid Conference and site meeting will be held at the Cumberland Library on **Friday, November 6, 2015 at 10:00 AM**. **The Cumberland Library is located on the grounds of the monastery at 1464 Diamond Hill Road, Cumberland, Rhode Island.**

Attention of the bidders is particularly called to the requirements as to conditions of employment to be observed and minimum wage rates to be paid under the Contract. In Conformity with the provisions of Chapter 13 of Title 37, General Laws, Rhode Island, 1956, as amended, the minimum wages for a day's work paid to craftsmen, teamsters and laborers shall be not less than the customary and prevailing rate of wages for a day's work in the locality where the work undertaken. Such a schedule of wages has been established on a minimum hourly basis and is on file in the office of the State Department of Labor.

The contract will be awarded to the most qualified proposer/bidder. The prospective bidders shall demonstrate at least ten years experience in the field of building waterproofing in addition to architectural, EIF construction, masonry, or other wall restoration as it pertains to historical structures with granite facades. The Town of Cumberland reserves the right to accept or reject, without prejudice, any and all bids to waive any irregularities therein, or to accept the proposal deemed to be in the best interest of the Town of Cumberland. The Town of Cumberland does not discriminate on the basis of age, race, religion, national origin, color or disability in accordance with applicable laws and regulations.

Bids must be submitted in sealed envelopes with the above noted proper title endorsed thereon; and addressed and delivered to the Town Finance Director, Town of Cumberland, Rhode Island. Three (3) copies of the Bid Proposal, consisting of the original bid and two (2) copies, shall be submitted to the Town.

If you any questions, please contact Brian Silvia, Finance Director, at 401-728-2400, ext. 120, or Robert Anderson, P.E., Public Works Director, at 401-728-2400, ext. 143.

Brian Silvia
Finance Director

INFORMATION FOR BIDDERS

1.0 RECEIPT AND OPENING OF BIDS

The Town of Cumberland (herein called the "Owner.") invites bids for the Cumberland Library Hayden Center Roof and Wall Leakage Repair and Waterproofing project on the form(s) attached hereto. Bids will be received at the office of the Finance Director; Town Hall (first floor), 45 Broad Street, Cumberland, Rhode Island, 02864 until **11:00 AM on Thursday, NOVEMBER 12, 2015**, and then at said office publicly opened and read aloud. Envelopes containing the bids must be sealed and addressed to the Owner and designated as bids for **Cumberland Library Hayden Center, Roof and Wall Leakage Repair and Waterproofing**.

2.0 PREPARATION OF BID

Each bid must be submitted on the prescribed form. All blank spaces for bid prices must be filled in, in ink or typewritten, in both words and figures. Erasures or other changes in the bid must be explained or noted over the signature of the bidder. The owner may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informality or reject any and all bids. Any bid may be withdrawn prior to the above scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid within 60 days after the actual date of the opening thereof.

3.0 TELEGRAPHIC MODIFICATION

No telegraphic bid or telegraphic modification of a bid will be accepted.

4.0 QUALIFICATIONS OF BIDDER

Each bidder shall present evidence that he is normally engaged in the purveying of the type of equipment bid upon. The bidder shall make himself thoroughly familiar with the contents of the bid requirements before submitting his bid. Bids will not be considered from bidders who are unable to show that they are normally engaged in the purveying of the type of equipment bid on. The owner may make such investigations as he deems necessary to determine the ability of the bidder to perform the work, and the bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner that such bidder fails to satisfy the Owner that such bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional bids will not be accepted.

5.0 BID SECURITY

Each bid must be accompanied by cash, certified check of the bidder, or a bid bond prepared on the form of bid bond attached hereto, duly executed by the bidder as principal and having as surety thereon a surety company approved by the Owner, in the amount of 5% of the bid. Such cash, checks or bid bonds will be returned to all except the three lowest bidders within five days after the opening of bids, and the remaining Cash, checks, or bid bonds will be returned promptly after the Owner and the accepted bidder have executed the contract, or if no award has been made within 60 days after the date of the opening of bids, upon demand of the bidder at any time thereafter, so long as he has not been notified of the acceptance of his bid.

6.0 LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT

The successful bidder, upon his failure or refusal to execute and deliver the contract and bonds required within 10 days after he has received notice of the acceptance of his bid, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with his bid.

7.0 TIME OF COMPLETION AND LIQUIDATED DAMAGES

Bidder must agree to commence work on or before a date to be specified in a written "Notice to Proceed" of the Owner and to fully complete the project within 45 consecutive calendar days thereafter. Bidder must agree also to pay as liquidated damages, the sum of \$100.00 for each consecutive calendar day thereafter as hereinafter provided in the General Conditions.

8.0 CONDITIONS OF WORK

Each bidder must inform himself fully of the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligation to furnish all material and labor necessary to carry out the provisions of his contract. Insofar as possible the contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor. **Prospective bidders will be allowed to view the exterior work roof-top location during the Pre-Bid Conference, which is scheduled for Friday, November 6, 2015 at 10:00 AM. If additional visits are required, bidders are requested to contact Celeste Dyer (Director - Cumberland Public Library) at 401-333-2552 ext. 127.**

9.0 ADDENDA AND INTERPRETATIONS

No interpretation of the meaning of the plans, specifications or other pre-bid documents will be made to any bidder orally. Every request for such interpretation should be in writing addressed to the Director of Public Works, Town Hall, Cumberland, Rhode Island, 02864 and to be given consideration must be received no later than **three (3)** days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, if issued, will be e-Mailed to all prospective bidders (at the respective e-Mail addresses furnished for such purposes), not later than **two (2)** days prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

10.0 SECURITY FOR FAITHFUL PERFORMANCE

Simultaneously with his delivery of the executed contract, the Contractor shall furnish a surety bond or bonds as security for faithful performance of this contract and for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract, as specified in the General Conditions included herein. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to the Owner.

11.0 POWER OF ATTORNEY

Attorneys-in-fact who sign bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

12.0 LAWS AND REGULATIONS

The bidder's attention is directed to the fact that all applicable State laws, municipal ordinances, and the rules and regulations of all authorities, having jurisdiction over construction of the project

shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

13.0 OBLIGATION OF BIDDER

At the time of the opening of bids, each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the plans and contract documents (including all addenda). The failure or omission of any bidder to examine any form, instrument or document shall in no way relieve any bidder from any obligation in respect to his bid. **It is incumbent that the site be examined by the bidder to ascertain all equipment and incidentals that may be required to complete the work. Site visits will be arranged as discussed under Article 8.0, Conditions of Work, of this section of the Contract Documents.**

14.0 UNCERTAINTY OF QUANTITIES

When applicable for unit bid pricing contracts, the quantities listed in the bid (proposal) are approximate and are given only for use in comparing bids and to indicate approximately the total amount of the Contract; and the Owner does not expressly or by implication represent that the actual amounts of work will even approximately correspond therewith, but does call particular attention to the uncertainty of the quantities of the work involved which cannot be predicted in advance.

The work under certain items may be materially greater or less than that given in the bid, as may be necessary in the judgment of the Owner to complete the work contemplated in the Contract.

Under the Contract, the Owner reserves the right to increase or decrease the approximate quantities for, or to omit entirely, any of the items as listed in the bid.

Only such quantities of the respective items of work actually performed and accepted will be paid for. An increase or decrease in the quantity for any item shall not be regarded as grounds for an increase or decrease in the bid prices.

15.0 ITEMS NOT LISTED IN THE BID

Appurtenant items of work shown on the drawings or specified or required to complete the work but not listed separately under the list of items in the bid shall be included in the cost of payment under the various applicable bid items of work and no separate payment will be made for such items. It shall be the responsibility of the Contractor to verify any missing or incomplete items.

16.0 BALANCED BIDDING

Minus bidding on any item or items of the Specifications is prohibited. Bids should be made on each separate item of work shown in the bid (proposal) with reasonable relation to the probable cost of doing the work included in such item and the right is reserved to reject wholly any bid in case any item or items thereof are obviously unbalanced or appear to the owner to be so unbalanced as to affect or to be liable to affect adversely any interests of the Owner. The attention of the bidder is called to the fact that unbalancing of bids may adversely affect the Contractor if certain portions of the work are increased or decreased as provided in the Contract Documents.

17.0 RHODE ISLAND SALES AND USE TAX

Materials and equipment purchased for installation under this contract are exempt from the Rhode Island Sales Tax. The Contractor, during bidding, shall take the exemption from the Sales Tax into account.

18.0 LABOR REGULATIONS – Required Contract Provisions for Federal Aid Projects

PART 1 – GENERAL (Not applicable to this contract)

This project may partially be funded with Community Development Block Grant funds. The contractor agrees to comply with the requirements of Title I of the Housing and Community Development Act of 1974, P.L. 93-383, as amended. This contract is subject to the regulations of the Department of Housing and Urban Development, 24 CFR Part 570, as published for effect and as may be amended from time to time.

PART 2 – DISCRIMINATION PROHIBITED

The contractor shall not discriminate against any employee in the performance of this contract, or against any applicant for employment in the performance of this grant because of race, creed, color, national origin, sex or sexual orientation. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, national origin, sex or sexual orientation. This requirement shall apply to, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with:

- 2.1 **Title VI Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et. seq.**, which states that no person shall be excluded from participation in, denied benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance on the basis of race, color or national origin.

PART 3 – LABOR STANDARDS

The Contractor agrees to adhere to the labor standards:

- 3.1 **The Davis-Bacon Act, 40 U.S.C. 276(a) – (a) 5**, which requires that minimum wages paid laborers and mechanics, must be based on the Department of Labor’s determination of prevailing wage rates.
- 3.2 **The Copeland “Anti-Kickback” Act, 40 U.S.C. 276 (c)**, which requires contractors to pay workers at least once a week without any rebates or “permissible” salary deductions, and
- 3.3 **The Contract Work Hours and Safety Standards Act, 40 U.S.C. 327-330**, which requires that laborers and mechanics shall not work in excess of forty hours in any work week unless they receive overtime compensation at a rate equal to 1.5 times their regular pay, unless modified by a collective bargaining agreement. Contractors operating in violation of the above are liable for liquidation damages, computed at \$20.00 per day for each employee who worked overtime and was not properly compensated. Funds may be withheld from contractors and subcontractors to satisfy unpaid wages and liquidated damages. If, contractors are aggrieved by, the withholding of a sum of liquidated damages, you have the right to appeal within 50 days.

TOWN OF CUMBERLAND

**Cumberland Library Hayden Center
Roof and Wall Leakage Repair and Waterproofing**

1.0 PROPOSAL STATEMENT:

The undersigned bidder has carefully examined the site of the project described herein; has become familiar with local conditions and the character and extent of the work, has carefully examined the drawings, and contract documents, and understands the requirements stipulated herein.

The undersigned bidder has determined the quality and quantity of equipment and materials required; has investigated the location and determined the sources of supply of the materials required; has investigated labor conditions; and has arranged for the continuous prosecution of the work herein described.

The undersigned bidder hereby agrees to be bound by the award of the contract, and, if awarded the contract on this proposal, to execute within ten (10) days after Notice of Award the required Contract Agreement and the required Contract Bond, of which contract this proposal, the drawings for the work, and the specifications as above indicated shall be a part.

The undersigned bidder further agrees to provide all necessary equipment, tools, labor, incidentals, and other means of construction to do all the work and furnish all the materials, of the specified requirements which are necessary to complete the work in accordance with the proposal, the drawings, and the specifications, and agrees to accept therefore, as payment in full, the lump sum price for the various items shown on the plans and described in the specifications as set forth in this proposal

The undersigned bidder declares that this proposal is made without connection with any other person or persons making proposals for the same work, and is in all respects fair and without collusion of fraud.

TOWN OF CUMBERLAND

BID FORM

**Cumberland Library Hayden Center
ROOF and WALL Leakage Repair and Waterproofing**

The undersigned hereby agrees to provide the Town of Cumberland with the necessary architectural and building waterproofing construction services to remove approximately seventy-five feet of portion of the base section of the EIF wall; furnish and install stainless steel flashing; furnish and install a flexible waterproofing counter flashing; and the restoration of the EIF wall within the designated work limits along the wall and roof of the Hayden Center in accordance with the Contract Specifications. The contract work will also include the waterproof testing along the exposed section of granite wall within the overall limits of the contract work.

The undersigned bidder submits herewith Proposal Guaranty in the form of a bid bond in favor of the Town of Cumberland, Rhode Island, or cash, in the amount of _____ and agrees and consents that the Proposal Guaranty shall be forfeited to the Town as liquidated damages if the required Contract Bond are not executed within ten (10) days from the date of the Notice of Award.

The undersigned bidder further agrees if awarded the Contract based upon this proposal, to begin work as stipulated in the Contract Agreement, and further agrees to complete the work under the provisions of this contract within 45 consecutive calendar days from the date of execution of the Contract Agreement, except as otherwise provided therein.

Total Lump Sum Bid is:

\$ _____
(Figures)

\$ _____
(Written)

Date: _____ Bidder: _____

By: _____

Title: _____

Address: _____

Being a () Corporation
 incorporated under the Laws of the State of _____
 () Partner
 () Individual

composed of officers, partners, or owner as follows:

CERTIFICATE OF CORPORATE ACKNOWLEDGEMENT

State of _____

County of _____

On this _____ day of _____, 20____,

before me personally came _____

who resides at _____

and is the _____, of the corporation described in and which executed the foregoing instrument; that he/she knows the corporation seal of said corporation; the seal affixed to the foregoing instrument is such corporation seal and it was so affixed by order of the Board of Directors of said corporation, and by the like order he/she signed thereto his/her name and official designation.

Notary Public (Seal)

My commission expires: _____

REFERENCE

The bidder is required to state below that work of a similar character to that included in the proposed contract he has done and give references which will enable the Town of Cumberland to make inquiries and judge as to his experience, skill, available financial resources, credit and business standing.

Reference Name _____

Company Name/ Organization _____

Telephone Number(s) _____

Type of Work Performed _____

Additional Information _____

Reference Name _____

Company Name/ Organization _____

Telephone Number(s) _____

Type of Work Performed _____

Additional Information _____

Reference Name _____

Company Name/ Organization _____

Telephone Number(s) _____

Type of Work Performed _____

Additional Information _____

Reference Name _____

Company Name/ Organization _____

Telephone Number(s) _____

Type of Work Performed _____

Additional Information _____

If necessary, provide attachments of additional REFERENCES.

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that _____
(Name of Contractor)

of _____
(Address of Contractor)

as Principal and _____ as Surety, are

hereby held and firmly bound unto _____ as owner in the

penal sum of _____ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators,

successors and assigns. Signed, this _____ day of _____, 20____.

The Condition of the above obligation is such that whereas the Principal has submitted

to _____ a certain bid, attached hereto and hereby

made a part to enter into a contract in writing, for the _____

NOW, THEREFORE,

- (a) If said Bid shall be rejected, or in the alternate,
- (b) If said Bid shall be accepted and the Principal Contract attached hereto (properly completed in accordance with said Bid) and shall furnish a bond for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said Bid,

then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

(L.S.)
Principal

Surety

By: _____

IMPORTANT – Surety companies executing bonds must appear on the Treasury Department’s most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

CONTRACT AGREEMENT

THIS AGREEMENT, made this the _____ day of _____, 2015, by and between (1) The Town of Cumberland acting herein through its (2) Mayor herein called "Owner" and (3) _____ doing business as *(an individual) (a partnership) (a corporation) located in the City of _____, County of _____, and State of _____, hereinafter called "Contractor."

WITNESSETH: that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Owner, the Contractor hereby agrees with the Owner to commence and complete the construction described as follows:

**CUMBERLAND LIBRARY HAYDEN CENTER
ROOF and WALL LEAKAGE REPAIR and WATERPROOFING**

Hereinafter called the project, the sum of _____ Dollars (\$ _____) and all extra work in connection therewith, under the terms as stated in the general and Supplemental conditions of the contract; and at his (its or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Proposal, the General Conditions, supplemental General Conditions and other Special conditions of the contract, the plans, which include all maps, plats, blue prints, and other drawings and printed or written explanatory matter thereof the specifications and contract documents therefore as prepared by the Town Engineer, herein entitled the Engineer, all of which are made a part hereof and collectively evidence and constitute the contract.

The Contractor hereby agrees to commence work under this contract on or before a date to be specified in written "Notice to Proceed" of the Owner and to fully complete the project within 45 consecutive calendar days thereafter. The Contractor further agrees to pay, as liquidated damages, the sum of \$100.00 for each consecutive calendar day thereafter as hereinafter provided in the General Conditions.

The Owner agrees to pay the Contractor in current funds for the performance of the contract, subject to additions and deductions, as provided in the General Conditions of the contract, and to make payments on account thereof as provided in the General Conditions.

IN WITNESS WHEREOF, the parties to these presents have executed this contract in three (3) counterparts, each of which shall be deemed as original, in the year and day first mentioned above.

(Seal)
ATTEST: _____ (Owner) _____ (Witness)
By _____ (Name) _____ (Title)
(Seal)
ATTEST: _____ (Contractor) _____ (Witness)
By _____ (Name) _____ (Title)

(Address)

*IMPORTANT: Strike out any inapplicable terms. Secretary of the Owner should attest. If Contractor is corporation, Secretary should attest. Give proper title of each person-executing contract.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that _____
(Name of Contractor)

of _____
(Address of Contractor)

as Principal hereinafter called Principal, and _____
(Name of Surety)

of _____
(Address of Surety)

a Corporation, organized and existing under the laws of the State of _____ hereinafter called Surety, are held and firmly bound unto the Town of Cumberland called the Obligee, in the full penal sum of _____ (\$ _____),

In lawful money of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS said Principal has entered into a certain written contract with said Obligee, dated the _____ day of _____, 2015, for the **CUMBERLAND LIBRARY HAYDEN CENTER ROOF and WALL LEAKAGE REPAIR and WATERPROOFING**, which contract, together with all Contract Documents now made or which may hereafter be made in extension, modification or alteration thereof, are hereby referred to, incorporated in And made a part of this bond as though herein fully set forth.

NOW, THEREFORE, if the said Principal shall well and truly keep, perform and execute all the terms, conditions and stipulations of said contract according to its provisions on his or its part to be kept and performed and shall indemnify and reimburse the obligee for any loss that it may suffer through failure of the principal to faithfully observe and perform each and every obligation and duty imposed upon the Principal by the said contract, at the time and in the manner therein specified, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

PROVIDED, HOWEVER, that any alterations which may be made in the terms of said contract or in the work done or to be done under it, or the giving by the Obligee of any extension of time for the performance of said Contract or any other forbearance on the part of either the Obligee or the Principal one to the others, shall not in any way released the Principal and/or the Surety, or either of them, their representatives, heirs, executors, administrators, successors or assigns from liability hereunder, notice to the Surety or Sureties of any such alteration, extension or forbearance being hereby specifically and absolutely waived.

AND PROVIDED FURTHER THAT NO ACTION, suit or proceeding shall be had or maintained against the Surety on this instrument unless the same be brought or instituted and process served upon the Surety within three years from the expiration of the guaranty period provided in the Contract, whether the work be completed by the Principal, or Obligee.

IN WITNESS WHEREOF, said principal and surety have signed and sealed this instrument this the _____ day of _____, 20____.

ATTEST: _____
(Principal)

ATTEST: _____
(Surety)

By _____
(Principal) Secretary
By _____
(Witness as to Principal)

By _____
(Surety) Secretary
By _____
(Witness as to Surety)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute bond.

IMPORTANT: Surety companies executing Bond must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Rhode Island.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that _____
(Name of Contractor)

of _____
(Address of Contractor)

as Principal hereinafter called Principal, and _____
(Name of Surety)

of _____
(Address of Surety)

a Corporation, organized and existing under the laws of the State of _____ hereinafter called Surety, are held and firmly bound unto the Town of Cumberland called the Obligee, in the full penal sum of _____ (\$ _____),

In lawful money of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT WHEREAS said Principal has entered into a certain written contract with said Obligee, dated the _____ day of _____, 20____ which written contract provides for the **CUMBERLAND LIBRARY HAYDEN CENTER ROOF and WALL LEAKAGE REPAIR and WATER PROOFING**, which contract, together with all plans and specifications now made or which may hereafter be made in extension, modification or alteration thereof, are hereby referred to, incorporated in and made a part of this bond as though herein fully set forth.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil gasoline, coal and coke, repairs or machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is executed, pursuant to the provision of the General Statutes of the State of Rhode Island and the rights and liabilities hereunder shall be determined and limited by said sections to the same extent as if they were copies at length herein.

PROVIDED FURTHER that the said Surety for value received hereby stipulates and agrees that no change, extension of time alteration, or addition to the terms of the contract or to the work to be performed there under, or the specifications accompanying the same, shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED FURTHER that no final settlement between the Obligee and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, said principal and surety have signed and sealed this instrument this _____ day of _____, 2015.

ATTEST: _____
(Principal)

ATTEST: _____
(Surety)

By _____
(Principal) Secretary

By _____
(Surety) Secretary

By _____
(Witness as to Principal)

By _____
(Witness as to Surety)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute bond.

IMPORTANT: Surety companies executing Bond must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Rhode Island.

NOTICE OF AWARD

TO:

PROJECT DESCRIPTION: **CUMBERLAND LIBRARY HAYDEN CENTER**
ROOF and WALL LEAKAGE REPAIR and WATERPROOFING

The OWNER has considered the BID submitted by you for the above referenced WORK in response to its Invitation for Bids dated _____, **2015** and Information for Bidders.

You are hereby notified that your BID has been accepted for items in the amounts shown in the Bid Schedule.

You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S PERFORMANCE BOND, PAYMENT BOND and certificates of insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said BONDS within ten (10) days from the date of this NOTICE, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of your BID BOND. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

This the ____ day of _____ 2015.

TOWN OF CUMBERLAND, RHODE ISLAND
OWNER

BY: _____
(Owner Name)

TITLE _____

ACCEPTANCE OF NOTICE

Receipt of the NOTICE OF AWARD is hereby acknowledged

BY: _____

This the _____ day of _____, 2015.

BY: _____

TITLE: _____

NOTICE TO PROCEED

TO:

PROJECT DESCRIPTION: **CUMBERLAND LIBRARY HAYDEN CENTER
ROOF and WALL LEAKAGE REPAIR and WATERPROOFING**

You are hereby notified to commence WORK in accordance with the agreement dated _____, on or before _____, and you are to complete the WORK within forty-five (45) consecutive calendar days thereafter. The date of completion of all WORK is therefore _____.

TOWN OF CUMBERLAND, RHODE ISLAND
OWNER

BY: _____
(Owner Name)

TITLE: _____

ACCEPTANCE OF NOTICE

Receipt of the NOTICE TO PROCEED is hereby acknowledged

BY: _____

This the _____ day of _____, 20____.

BY: _____

TITLE: _____

CHANGE ORDER

Order No.: _____
Date: _____
Agreement Date: _____

NAME OF PROJECT: **CUMBERLAND LIBRARY HAYDEN CENTER
ROOF and WALL LEAKAGE REPAIR and WATERPRROFING**

OWNER: TOWN OF CUMBERLAND, RHODE ISLAND

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification:

Change to CONTRACT PRICE: \$ _____

Original CONTRACT PRICE: \$ _____

Current CONTRACT PRICE adjusted by previous CHANGE ORDER \$ _____

The CONTRACT PRICE due to this CHANGE ORDER will be (increased)(decreased) by: \$ _____

The new CONTRACT PRICE including this CHANGE ORDER will be \$ _____

Change to CONTRACT TIME:

The CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased) by _____ calendar days.

The date for completion of all work will be _____
(Date)

Approvals required:

To be effective this Order must be approved if it changes the scope or objective of the PROJECT, or as may otherwise be required by SUPPLEMENTAL GENERAL CONDITIONS.

Requested by: _____

Recommended by: _____

Ordered by: _____

Accepted by: _____

CERTIFICATE OF COMPLIANCE

State/Commonwealth of _____

County of _____

_____ being first duly sworn, deposes and says that:

1. He (she) is the _____ (owner, partner, officer, representative of agent) of _____, the bidder that has submitted the attached bid.
2. He (she) is fully informed respecting the preparation and contents of the attached bid and all pertinent circumstances respecting such bid.
3. The business entity that has submitted this bid will, in performing this contract, be in full compliance with all municipal ordinances or regulations.

Signed: _____

Title: _____

Date: _____

State of _____

County of _____

In _____ on the _____ day of 2010, personally appeared before me

_____ known to me and known by me to be the party executing the foregoing instrument and he/she acknowledged that such execution by him/her was his/her free act and deed and the free act and deed of the company in his/her capacity aforesaid.

Signed: _____
(Notary Public)

My commission expires: _____

GENERAL CONDITIONS

1.0 DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

ADDENDA – Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the bidding documents or the Contract Documents.

AGREEMENT – The written agreement between the Owner and the Contractor covering the work to be performed; other Contract Documents are attached to the Agreement and made part thereof as provided therein.

APPLICATION FOR PAYMENT – The form accepted by the Engineer which is to be used by the Contractor in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

BID – The Offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

BONDS – Bid, performance and payment bonds and other instruments of security.

CHANGE ORDER – A document recommended by the Engineer who is signed by the Contractor and the Owner and authorizes an addition, deletion or revision in the work, or an adjustment in the Contract Price or the Contract Time; issued on or after the Effective Date of the Agreement.

CONTRACT DOCUMENTS – The Agreement, Addenda (which pertain to the Contract Documents), the Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all amendments, modifications and supplements issued pursuant to paragraphs 3.4 and 3.5 on or after the Effective Date of the Agreement.

CONTRACT PRICE – The moneys payable by the Owner to the Contractor under the Contract Documents as stated in the Agreement (subject to the Provisions of paragraph 11.9.1 in the case of Unit Price Work).

CONTRACT TIME – The number of days (computed as provided in paragraph 17.2) or the date stated in the Agreement for the completion of the work.

CONTRACTOR – The person, firm or corporation with whom the Owner has entered into the Agreement.

DEFECTIVE – An adjective which when modifying the work Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to the Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by the Owner at Substantial Completion in accordance with paragraph 14.8 or 14.10).

DRAWINGS – The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by the Engineer and are referred to in the Contract Documents.

EFFECTIVE DATE OF THE AGREEMENT – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

ENGINEER – for the purpose of this contract is the Cumberland Town Engineer.

FIELD ORDER – A written order issued by the Engineer which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price of the Contract time.

GENERAL REQUIREMENTS – Sections of Division 1 of the Specifications.

LAWS AND REGULATIONS; LAWS OR REGULATIONS – Laws, rules, regulations, ordinances, codes and/or orders.

NOTICE OF AWARD – The written notice by the Owner to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, the Owner will sign and deliver the Agreement.

NOTICE TO PROCEED – A written notice given by the Owner to the Contractor (with a copy to the Engineer) fixing the date on which the Contract time will commence to run and on which the Contractor shall start to perform the Contractor's obligations under the Contract Documents.

OWNER – The public body or authority, corporation, association, firm or person with whom the Contractor has entered into the Agreement and for whom the work is to be provided.

PARTIAL UTILIZATION – Placing a portion of the Work in service for the purpose for which it is intended (or related purpose) before reaching Substantial Completion for all Work.

PROJECT – The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

RESIDENT PROJECT REPRESENTATIVE – The authorized representative of the Owner who is assigned to the site or any part thereof.

SHOP DRAWINGS – All drawing, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

SPECIFICATIONS – Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the work and certain administrative details applicable thereto.

SUBCONTRACTOR – An individual, firm or corporation having direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

SUBSTANTIAL COMPLETION – The work (or a specific part thereof) has progressed to the point where, in the opinion of the Engineer as evidenced by the Engineer's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

SUPPLEMENTARY CONDITIONS – The part of the Contract Documents, which amends or supplements these General Conditions.

SUPPLIER – A manufacturer, fabricator, supplier, distributor, material man or vendor.

UNDERGROUND FACILITIES – All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

WORK – The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

WORK DIRECTIVE CHANGE – A written directive to the Contractor, issued on or after the Effective Date of the Agreement and signed by the Owner and recommended by the Engineer, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.22. A work Directive change may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Work Directive Change will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time as provided in paragraph 10.2.

WRITTEN AMENDMENT – A written amendment of the Contract Documents, signed by the Owner and the Contractor on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly Work-related aspects of the Contract Documents.

2.0 PRELIMINARY MATTERS

DELIVERY OF BONDS:

- 2.1 When the Contractor delivers the executed Agreements to the Owner, the Contractor shall also deliver to the Owner such Bonds as the Contractor may be required to furnish in accordance with paragraph 5.1.

COPIES OF DOCUMENTS:

- 2.2 The Owner shall furnish to the Contractor up to five copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

COMMENCEMENT OF CONTRACT TIME; NOTICE TO PROCEED:

- 2.3 The Contract Time will commence to run on the thirtieth day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective date of the Agreement. In no event will the Contract time commence to run later than the seventy-fifth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

STARTING THE PROJECT:

- 2.4 The Contractor shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

BEFORE STARTING CONSTRUCTION:

- 2.5 Before undertaking each part of the Work, the Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements, the Contractor shall promptly report in writing to the Engineer any conflict, error or discrepancy which the Contractor may discover and shall obtain a written interpretation or clarification from the Engineer before proceeding with any Work affected thereby; however, the Contractor shall not be liable to the Owner or the Engineer for failure to report any conflict, error or discrepancy in the Contract Documents, unless the Contractor had actual knowledge thereof or should reasonable have known thereof.
- 2.6 Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), the Contractor shall submit to the Engineer for review:
- 2.6.1 an estimated progress schedule indicating the starting and completion dates of the various stages of the work;
- 2.6.2 a preliminary schedule of Shop Drawing submissions; and
- 2.6.3 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will sub-divide the work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work, which will be confirmed in writing by the Contractor at the time of submission.
- 2.7 Before any Work at the site is started, the Contractor shall deliver to the Owner, with a copy to the Engineer, certificates (and other evidence of insurance requested by the Owner) which the Contractor is required to purchase and maintain in accordance with paragraphs 5.3 and 5.4, and the Owner shall deliver to the Contractor certificates (and other evidence of insurance requested by the Contractor) which the Owner is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7.

PRECONSTRUCTION CONFERENCE:

- 2.8 Within twenty days after the Effective Date of the Agreement, but before the Contractor starts the Work at the site, a conference attended by the Contractor, the Engineer and others as appropriate will be held to discuss the schedules referred to in paragraph 2.6, to discuss procedures for handling Shop Drawings and other submittals and for processing Applications for Payment, and to establish a working understanding among the parties as to the Work.

FINALIZING SCHEDULES:

- 2.9 At least ten days before submission of the first Application for Payment a conference attended by the Contractor, the Engineer and others as appropriate will be held to finalize the schedule submitted in accordance with paragraph 2.6. The finalized progress schedule will be acceptable to the Engineer as providing an orderly progression of the

Work to completion within the Contract Time, but such acceptance will neither impose on the Engineer responsibility for the progress or scheduling of the Work nor relieve the Contractor from full responsibility therefore. The finalized schedule of Shop Drawings submissions will be acceptable to the Engineer as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to the Engineer as to form and substance.

3.0 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

INTENT:

- 3.1 The Contract Documents comprise the entire agreement between the Owner and the Contractor concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.
- 3.2 It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any government authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of the Owner, the Contractor or the Engineer, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the Engineer, or any of the Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16. Clarifications and interpretations of the Contract Documents shall be issued by the Engineer as provided in paragraph 9.4.
- 3.3 If, during the performance of the Work, the Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall so report to the Engineer in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from the Engineer; however, the Contractor shall not be liable to the Owner or the Engineer for failure to report any conflict, error or discrepancy in the Contract Documents unless the Contractor had actual knowledge thereof or should reasonably have known thereof.

AMENDING AND SUPPLEMENTING CONTRACT DOCUMENTS:

- 3.4 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:
- 3.4.1 a formal Written Amendment,
- 3.4.2 a Change Order (pursuant to paragraph 10.4), or

3.4.3 a Work Directive change (pursuant to paragraph 10.1).

As indicated in paragraphs 11.2 and 12.1, Contract Price and Contract Time may only be changed by a Change Order or a Written Amendment.

3.5 In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:

3.5.1 a Field Order (pursuant to paragraph 9.5),

3.5.2 the Engineer's approval of a Shop Drawing or sample (pursuant to paragraphs 6.26 and 6.27), or

3.5.3 the Engineer's written interpretation or clarification (pursuant to paragraph 9.4).

REUSE OF DOCUMENTS:

3.6 Neither the Contractor nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with the Owner shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of the Engineer; and they shall not reuse any of them on extensions of the Project or any other project without written consent of the Owner and the Engineer and specific written verification or adaptation by the Engineer.

4.0 BONDS AND INSURANCE

PERFORMANCE AND OTHER BONDS:

5.1 The Contractor shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. The Contractor shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the forms prescribed by Law or Regulation or by the Contract Documents and be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. A certified copy of the authority to act must accompany all Bonds signed by an agent.

5.2 If the surety on any Bond furnished by the Contractor is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.1, the Contractor shall within five days thereafter substitute another Bond and Surety, both of which must be acceptable to the Owner.

CONTRACTOR'S LIABILITY INSURANCE:

5.3 The Contractor shall purchase and maintain such comprehensive general liability result from the Contractor's performance and furnishing of the Work and the Contractor's other obligations under the Contract Documents, whether it is to be performed or furnished by the Contractor, by any Subcontractor, by anyone directly or indirectly employed by any

of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

- 5.3.1 Claims under worker or workmen's compensation, disability benefits and other similar employee benefit acts;
- 5.3.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- 5.3.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- 5.3.4 Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (b) by any other person for any other reason;
- 5.3.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;
- 5.3.6 Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property; and
- 5.3.7 Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

The insurance required by this paragraph 5.3 shall include the specific coverages and be written for not less than the limits of liability and coverages provided in the Supplementary Conditions, or required by law, whichever is greater. The comprehensive general liability insurance shall include complete operations insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be cancelled, materially changed or renewal refused until at least thirty days' prior written notice has been given to the Owner and the Engineer by certified mail. All such insurance shall remain in effect until final payment and at all times thereafter when the Contractor may be correcting, removing or replacing defective work in accordance with paragraph 13.12. In addition, the Contractor shall maintain such completed operations insurance for at least two years after final payment and furnish the Owner with evidence of continuation of such insurance at final payment and one year thereafter.

CONTRACTUAL LIABILITY INSURANCE:

- 5.4 The comprehensive general liability insurance required by paragraph 5.3 would include contractual liability insurance applicable to the Contractor's obligations under paragraphs 6.30 and 6.31.

OWNER'S LIABILITY INSURANCE:

- 5.5 The Owner shall be responsible for purchasing and maintaining the Owner's own liability insurance and, at the Owner's option, may purchase and maintain such insurance as will protect the Owner against claims which may arise from operations under the Contract Documents.

PROPERTY INSURANCE:

- 5.6 Unless otherwise provided in the Supplementary conditions, the Owner shall purchase and maintain property insurance upon the Work at the site to the full insurable value thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall include the interests of the Owner, the Contractor, Subcontractors, and the Engineer and Engineer's consultants in the Work, all of whom shall be listed as insured or additional insured parties, shall insure against the perils of fire and extended coverage and shall "all risk" insurance for physical loss and damage including theft, vandalism and malicious mischief, collapse and water damage, and such other perils as may be provided in the Supplementary Conditions, and shall include damages, losses and expenses arising out of resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals). If not covered under the "all risk" insurance or otherwise provided in the Supplementary Conditions, the Contractor shall purchase and maintain similar property insurance on portions of the Work stored on and off the site or in transit when such portions of the Work are to be included in an Application for Payment.
- 5.7 The Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of the Owner, the Contractor, Subcontractors, the Engineer and the Engineer's consultants in the Work, all of whom shall be listed as insured or additional insured parties.
- 5.8 All the policies of insurance (or the certificates or other evidence thereof) required to be purchased and maintained by the Owner in accordance with paragraphs 5.6 and 5.7 will contain a provision or endorsement that the coverage afforded will not be cancelled or materially changed or renewal refused until at least thirty days' prior written notice has been given to the Contractor by certified mail and will contain waiver provisions in accordance with paragraph 5.11.2.
- 5.9 The Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of the Contractor, Subcontractors or others in the Work to the extent of any deductible amounts that are provided in the Supplementary Conditions. The risk of loss within the contractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.
- 5.10 If the contractor requests in writing that other special insurance be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof will be charged to the Contractor by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the site, the Owner shall in writing advise the Contractor whether or not such other insurance has been procured by the Owner.
- 5.11 WAIVER OF RIGHTS:
- 5.11.1 The Owner and the Contractor waive all rights against each other for all losses and damages caused by any of the perils covered by the policies of insurance provided in response to paragraphs 5.6 and 5.7 and any other property insurance applicable to the Work, and also waive all such rights against the Subcontractors, the Engineer, the Engineer's consultants and all other parties named as insured in such policies for losses and damages so caused. As required by paragraph 6.11, each subcontractor between the Contractor and a

Subcontractor will contain similar waiver provisions by the Subcontractor in favor of the Owner, the Contractor, the Engineer, the Engineer's consultants and all other parties named as insured. None of the above waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by the Owner as trustee or otherwise payable under any policy so issued.

- 5.11.2 The Owner and the Contractor intend that any policies provided in response to paragraphs 5.6 and 5.7 shall protect all of the parties insured and provide primary coverage for all losses and damages caused by the perils covered thereby. Accordingly, all such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as insured or additional insured, and if the insurers require separate waiver forms to be signed by the Engineer or the Engineer's consultant the Owner will obtain the same, and if such waiver forms are required of any same, and if such waiver forms are required of any Subcontractor, the Contractor will obtain the same.

RECEIPT AND APPLICATION OF PROCEEDS:

- 5.12 Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with the Owner and made payable to the Owner as trustee for the insured, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. The Owner shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.
- 5.13 The Owner as trustee shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen days after the occurrence of loss to the Owner's exercise of this power. If such objection were made, the Owner as trustee shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If required in writing by any party in interest, the Owner as trustee shall, upon the occurrence of an insured loss, give bond for the proper performance of such duties.

ACCEPTANCE OF INSURANCE:

- 5.14 If the Owner has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by the Contractor in accordance with paragraphs 5.3 and 5.4 on the basis of its not complying with the Contract Documents, the Owner shall notify the Contractor in writing thereof within ten days of the date of delivery of such certificates to the Owner in accordance with paragraph 2.7. If the Contractor has any objection to the coverage afforded by or other provisions of the policies of insurance required to be purchased and maintained by the Owner in accordance with paragraphs 5.6 and 5.7 on the basis of their not complying with the Contract Documents, the Contractor shall notify the Owner in writing thereof within ten days of the date of delivery of such certificates to the Contractor in accordance with paragraph 2.7. The Owner and the Contractor shall each provide to the other such additional information in respect of insurance provided by each as the other may reasonably request. Failure by the Owner or the Contractor to give any such notice of objection within the time provided shall constitute acceptance of such insurance purchased by the other as complying with the Contract Documents.

PARTIAL UTILIZATION – PROPERTY INSURANCE:

- 5.15 The Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or lapse on account of any such partial use or occupancy.

6.0 CONTRACTOR'S RESPONSIBILITIES

SUPERVISION AND SUPERINTENDENCE:

- 6.1 The Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. The Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but the Contractor shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence of procedure of construction which is indicated in and required by the Contract Documents. The Contractor shall be responsible to see that the finished Work complies accurately with the Contract Documents.
- 6.2 The Contractor shall keep on the work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to the Owner and the Engineer except under extraordinary circumstances. The superintendent will be the Contractor's representative at the site and shall have authority to act on behalf on the Contractor. All communications given to the superintendent shall be as binding as if given to the Contractor.

LABOR, MATERIALS AND EQUIPMENT:

- 6.3 The Contractor shall provide competent, suitably qualified personnel to survey and lay out the work and perform construction as required by the Contractor Documents. The Contractor shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and the Contractor will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without the Owner's written consent given after prior written notice to the Engineer.
- 6.4 Unless otherwise specified in the General Requirements, the Contractor shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.
- 6.5 All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by the Engineer, the Contractor shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to the Engineer, or any of the Engineer's consultants, agents or

employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16.

ADJUSTING PROGRESS SCHEDULE:

6.6 The Contractor shall submit to the Engineer for acceptance (to the extent indicated in paragraph 2.9) adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

6.7 SUBSTITUTES OR "OR-EQUAL" ITEMS:

6.7.1 Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of particular Supplier the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment or other Suppliers, may be accepted by the Engineer, if sufficient information is submitted by the Contractor to allow the Engineer to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by the Engineer will include the following as supplemented in the General Requirements. Requests for review of substitute items of material and equipment will not be accepted by the Engineer from anyone other than the Contractor. If the Contractor wishes to furnish or use a substitute item of material or equipment, the Contractor shall make written application to the Engineer for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice the Contractor's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with the Owner for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by the Engineer in evaluating the proposed substitute. The Engineer may require the Contractor to furnish at the Contractor's expense additional data about the proposed substitute. The Engineer may require the Contractor's expense additional data about the proposed substitute.

6.7.2 If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, the Contractor may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to the Engineer, if the Contractor submits sufficient information to allow the Engineer to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by the Engineer will be similar to that provided in

paragraph 6.7.1 as applied by the Engineer and as may be supplemented in the General Requirements.

6.7.3 The Engineer will be allowed a reasonable time within which to evaluate each proposed substitute. The Engineer will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without the Engineer's prior written acceptance, which will be evidenced, by either a Change Order or an approved Shop Drawing. The Owner may require the Contractor to furnish at the Contractor's expense a special performance guarantee or other surety with respect to any substitute. The Engineer will record time required by the Engineer and the Engineer's consultants in evaluating substitutions proposed by the Contractor and in making changes in the Contract Documents occasioned thereby. Whether or not the Engineer accepts a proposed substitute, the Contractor shall reimburse the Owner for the charges of the Engineer and the Engineer's consultants for evaluating each proposed substitute.

6.8 CONCERNING SUBCONTRACTORS, SUPPLIERS AND OTHERS:

6.8.1 The Contractor shall not employ and Subcontractor, Supplier or other person or organization (including those acceptable to the Owner and the Engineer as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom the Owner or the Engineer may have reasonable objection. The Contractor shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom the Contractor has reasonable objection.

6.8.2 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to the Owner in advance of the specified date prior to the Effective Date of the Agreement for acceptance by the Owner and the Engineer and if the Contractor has submitted a list thereof in accordance with the Supplementary Conditions, the Owner's or the Engineer's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case the Contractor shall submit an acceptable substitute, the Contract Price will be increased by the difference in the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Agreement signed. No acceptance by the Owner or the Engineer of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of the Owner or the Engineer to reject defective Work.

6.9 The Contractor shall be fully responsible to the Owner and the Engineer for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with the Contractor just as the contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between the owner or the Engineer and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of the Owner or the Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

- 6.10 The divisions and sections of the Specifications and the identifications of any Drawings shall not control the Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- 6.11 All Work performed for the Contractor by a Subcontractor will be pursuant to an appropriate agreement between the Contractor and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the Owner and the Engineer and contains waiver provisions as required by paragraph 5.11. The Contractor shall pay each Subcontractor a just share of any insurance moneys received by the Contractor on account of losses under policies issued pursuant to paragraphs 5.6 and 5.7

PATENT FEES AND ROYALTIES:

- 6.12 The Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the contract Documents for use in the performance of the Work and if to the actual knowledge of the Owner or the Engineer its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents. The Contractor shall indemnify and hold harmless the Owner and the Engineer and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses (including attorney's fees and court and arbitration costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

PERMITS:

- 6.13 Unless otherwise provided in the Supplementary Conditions, the Contractor shall obtain and pay for all construction permits and licenses. The Owner shall assist the Contractor, when necessary, in obtaining such permits and licenses. The Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or if there are no Bids on the Effective Date of the Agreement. The Contractor shall pay all charges of utility owners for connections to the Work, and the Owner shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

6.14 LAWS AND REGULATIONS:

- 6.14.1 The Contractor shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither the Owner nor the Engineer shall be responsible for monitoring the Contractor's compliance with any Laws or Regulations.
- 6.14.2 If the Contractor observes that the Specifications or Drawings are at variance with any Laws or Regulations, the Contractor shall give the Engineer prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 3.4. If the Contractor performs any Work knowing or having reason to know that it is contrary to such Laws or Regulations, and without such notice to the Engineer, the Contractor shall bear all costs arising there from; however, it shall not be the Contractor's primary

responsibility to make certain that the specifications and Drawings are in accordance with such Laws and Regulations.

TAXES:

- 6.15 The Contractor shall pay all sales, consumer, use and other similar taxes, required to be paid by the Contractor in accordance with the Laws and Regulations of the place of the Project, which are applicable during the performance of the Work.

USE OF PREMISES:

- 6.16 The Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against the Owner or the Engineer by any such owner or occupant because of the performance of the Work, or the Contractor shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. The Contractor shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold the Owner and the Engineer harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against the Owner or the Engineer to the extent based on a claim arising out of the Contractor's performance of the Work.
- 6.17 During the progress of the Work, the Contractor shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the work the Contractor shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the Owner. The Contractor shall restore to original condition all property not designated for alteration by the Contract Documents.
- 6.18 The Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall the Contractor subject any part of the Work or adjacent property to stresses or pressure that will endanger it.
- 6.19 The Contractor shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with approved samples and a counterpart of all approved Shop Drawings will be available to the Engineer for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to the Engineer for the Owner.

SAFETY AND PROTECTION:

- 6.20 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all

necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- 6.20.1 all employees on the Work and other persons and organizations who may be affected thereby;
- 6.20.2 all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
- 6.20.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

The Contractor shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by the Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of the Owner or the Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the Contractor). The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and the Engineer has issued a notice to the Owner and the Contractor in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

- 6.21 The Contractor shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated in writing by the Contractor to the Owner.

EMERGENCIES:

- 6.22 In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the Contractor, without special instruction or authorization from the Engineer or the Owner, is obligated to act to prevent threatened damage, injury or loss. The Contractor shall give the Engineer prompt written notice if the Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If the Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive change or Change Order will be issued to document the consequences of the changes or variations.

SHOP DRAWINGS AND SAMPLES:

- 6.23 After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, the Contractor shall submit to the Engineer for review and approval in accordance with the accepted schedule of Shop Drawings submissions (see paragraph 2.9), or for other appropriate action if so indicated in the Supplementary Conditions, five copies (unless otherwise specified in the General

Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that the Contractor has satisfied the Contractor's responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as the Engineer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable the Engineer to review the information as required.

- 6.24 The Contractor shall also submit to the Engineer for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that the Contractor has satisfied the Contractor's responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.
- 6.25.1 Before submission of each Shop Drawing or sample the Contractor shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.
- 6.25.2 At the time of each submission, the Contractor shall give the Engineer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to the Engineer for review and approval of each such variation.
- 6.26 The Engineer will review and approve with reasonable promptness Shop Drawings and samples, but the Engineer's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. The Contractor shall make corrections required by the Engineer, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review and approval. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Engineer on previous submittals.
- 6.27 The Engineer's review and approval of shop Drawings or samples shall not relieve the Contractor from responsibility for any variation from the requirements of the Contract Documents unless the Contractor has in writing called the Engineer's attention to each such variation at the time of submission as required by paragraph 6.25.2 and the Engineer has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the or Shop Drawing or sample approval; nor will any approval by the Engineer relieve the Contractor from responsibility for errors omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 6.25.1.
- 6.28 Where a Shop Drawing or sample is required by the Specifications, any related work performed prior to the Engineer's review and approval of the pertinent submission will be the sole expense and responsibility of the Contractor.

CONTINUING THE WORK:

- 6.29 The Contractor shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the Owner. No work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as the Contractor and the Owner may otherwise agree in writing.

INDEMNIFICATION:

- 6.30 To the fullest extent permitted by Laws and Regulations the Contractor shall indemnify and hold harmless the Owner and the Engineer and their consultants, agents and employees from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.
- 6.31 In any and all claims against the Owner or the Engineer or any of their consultants, agents or employees by any employee of the Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.30 shall not be limited in any way by any limitation on the amount or type of damages, compensation benefits payable by or for the Contractor of any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 6.32 The obligations of the Contractor under paragraph 6.30 shall not extend to the liability of the Engineer, the Engineer's consultants, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications.

7.0 OTHER WORK

RELATED WORK AT SITE:

- 7.1 The Owner may perform other work related to the Project at the site by the Owner's own forces, have other work performed by utility owners or let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to the Contractor prior to starting any such other work; and, if the Contractor believes that such performance will involve additional expense to the Contractor or requires additional time and the parties are unable to agree as to the extent thereof, the Contractor may make a claim therefore as provided in Articles 11 and 12.
- 7.2 The Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or the Owner, if the Owner is performing the additional work with the Owner's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work with theirs. The Contractor shall do all cutting, fitting and patching of the Work that may

be required to make its several parts come together properly and integrate with such other work. The Contractor shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of the Engineer and the others whose work will be affected. The duties and responsibilities of the Contractor under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of the Contractor in said direct contracts between the Owner and such utility owners and other contractors.

- 7.3 If any part of the Contractor's Work depends for proper execution or results upon the Work of any such other contractor or utility owner (or the Owner), the Contractor shall inspect and promptly report to the Engineer in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. The Contractor's failure so to report will constitute an acceptance of the other work as fit and proper for integration with the Contractor's Work except for latent or non-apparent defects and deficiencies in the other work.

COORDINATION:

- 7.4 If the Owner contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Supplementary Conditions, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided, in the Supplementary Conditions. Unless otherwise provided in the Supplementary Conditions, neither the Owner nor the Engineer shall have any authority or responsibility in respect of such coordination.

8.0 OWNER'S RESPONSIBILITIES

- 8.1 The Owner shall issue all communications directly to the Contractor with a copy to the Engineer.
- In case of termination of the employment of the Engineer, the Owner shall appoint an engineer against whom the Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer. Any dispute in connection with such appointment shall be subject to arbitration.
- 8.2 The Owner shall furnish the data required of the Owner under the Contract Documents promptly and shall make payments to the Contractor promptly after they are due as provided in paragraphs 14.4 and 14.13.
- 8.3 The Owner's duties in respect of providing lands and easements and providing basic land surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to the Owner's identifying and making available to the Contractor copies of reports of exploration and tests of subsurface conditions at the site and in existing structures which have been utilized by the Engineer in preparing the Drawings and Specifications.
- 8.4 The Owner's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in paragraphs 5.5 and 5.8.
- 8.5 The Owner is obligated to execute Change Orders as indicated in paragraph 10.4.
- 8.6 The Owner's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.

8.7 In connection with the Owner's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with the Owner's right to terminate services of the Contractor under certain circumstances.

9.0 ENGINEER'S STATUS DURING CONSTRUCTION

OWNER'S REPRESENTATIVE:

9.1 The Engineer will be the Owners representative during the construction period. The duties and responsibilities and the limitations of authority of the Engineer as the Owner's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of the Owner and the Engineer.

VISIT TO SITE:

9.2 The Engineer will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer's efforts will be directed toward providing for the Owner a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design professional, the Engineer will keep the Owner informed of the progress of the Work and will endeavor to guard the Owner against defects and deficiencies in the Work.

PROJECT REPRESENTATION:

9.3 If the Owner and the Engineer agree, the Engineer will furnish a Resident Project Representative to assist the Engineer in observing the performance of the Work. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions. If the Owner designates another agent to represent the Owner at the site who is not the Engineer's agent or employee, the duties, responsibilities and limitations of authority of such other person will be the same as those described for the Engineers agent.

CLARIFICATIONS AND INTERPRETATIONS:

9.4 The Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as the Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If the Contractor believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, the Contractor may make a claim therefore as provided in Article 11 or Article 12.

AUTHORIZED VARIATIONS IN WORK:

9.5 The Engineer may authorize minor variations in the Work from the requirements of the Contract Documents, which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on the Owner, and also on the Contractor who shall perform the work involved promptly. If the Contractor believes that a Field Order justifies an increase in the Contract Price or an extension of

the Contract Time and the parties are unable to agree as to the amount or extent thereof, the contractor may make a claim therefore as provided in Article 11 or 12.

REJECTING DEFECTIVE WORK:

- 9.6 The Engineer will have authority to disapprove or reject Work which the Engineer believes to be defective, and will also have authority to require special inspection or testing of the work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

SHOP DRAWINGS, CHANGE ORDERS AND PAYMENTS:

- 9.7 In connection with the Engineer's responsibility for Shop Drawings and samples, see paragraphs 6.23 through 6.29 inclusive.
- 9.8 In connection with the Engineer's responsibilities as to Change Orders, see Articles 10, 11 and 12.
- 9.9 In connection with the Engineer's responsibilities in respect of Applications for Payment, etc., see Article 14.

DECISION ON DISPUTES:

- 9.10 The Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work hereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Time will be referred initially to the Engineer in writing with a request for a formal decision in accordance with this paragraph, which the Engineer will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to the Engineer and the other party to the Agreement promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to the Engineer and the other party within sixty days after such occurrence unless the Engineer allows an additional period of time to ascertain more accurate data in support of the claim.
- 9.11 When functioning as interpreter and judge under paragraphs 9.10 and 9.11, the Engineer will not show partiality to the Owner or the Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by the Engineer pursuant to paragraphs 9.10 and 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by the Owner or the Contractor of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

LIMITATIONS ON ENGINEER'S RESPONSIBILITIES:

- 9.12 Neither the Engineer's authority to act under this Article 9 or elsewhere in the Contract Documents nor any decision made by the Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

- 9.13 Whenever in the Contract Documents the terms "as ordered", "as directed", "As required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of the Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to the Engineer any duty or authority to supervise direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.15 or 9.16.
- 9.14 The Engineer will not be responsible for the Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and the Engineer will not be responsible for the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.
- 9.15 The Engineer will not be responsible for the acts or omissions of the Contractor or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

10.0 CHANGES IN THE WORK

- 10.1 Without invalidating the Agreement and without notice to any surety, the Owner may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Written Amendment, a Change Order, or a Work Directive Change. Upon receipt of any such document, the Contractor shall promptly proceed with the Work involved, which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- 10.2 If the Owner and the Contractor are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefor as provided in Article 11 or Article 12.
- 10.3 The Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.4 and 3.5, except in the case of an emergency as provided in paragraph 6.22 and except in the case of uncovering Work as provided in paragraph 13.9.
- 10.4 The Owner and the Contractor shall execute appropriate Change Orders (or Written Amendments) covering:
- 10.4.1 changes in the Work which are ordered by the Owner pursuant to paragraph 10.1, are required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or are agreed to by the parties;
 - 10.4.2 changes in the Contract Price or Contract Time which are agreed to by the parties; and
 - 10.4.3 changes in the Contract Price or Contract Time, which embody the substance of any written decision, rendered by the Engineer pursuant to paragraph 9.11;

provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and

applicable Laws and Regulations, but during any such appeal, the Contractor shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.

- 10.5 If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be the Contractor's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

11.0 CHANGE OF CONTRACT PRICE

- 11.1 The Contract Price constitutes the Total compensation (subject to authorized adjustments) payable to the Contractor for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by the Contractor shall be at his expense without change in the Contract Price.
- 11.2 The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to the Engineer promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such occurrence (unless the Engineer allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims, for adjustment in the Contract Price, shall be determined by the Engineer, in accordance with paragraph 9.11, if the Owner and the Contractor cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2.
- 11.3 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:
 - 11.3.1 Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3, inclusive).
 - 11.3.2 By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2.1).
 - 11.3.3 On the basis of the Cost of the work (determined as provided in paragraphs 11.4 and 11.5) plus a Contractor's Fee for overhead and profit (determined as provided in paragraphs 11.6 and 11.7).

COST OF THE WORK:

- 11.4 The term Cost of the Work means the sum of all costs necessarily incurred and paid by the contractor in the proper performance of the Work. Except as otherwise may be agreed to in writing by the Owner, such costs shall be in amounts no higher than those prevailing in the locality of the project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:
 - 11.4.1 Payroll costs for employees in the direct employ of the Contractor in the performance of the Work under schedules of job classifications agreed upon by the Owner and the Contractor. Payroll costs for employees not employed full

time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by the Owner.

- 11.4.2 Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to the Contractor unless the Owner deposits funds with the Contractor with which to make payments, in which case the cash discounts shall accrue to the Owner. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they may be obtained.
- 11.4.3 Payments made by the Contractor to the Subcontractors for Work performed by Subcontractors. If required by the Owner, the Contractor shall obtain competitive bids from Subcontractors acceptable to the Contractor and shall deliver such bids to the Owner who will then determine, with the advice of the Engineer, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work shall be determined in the same manner as the Contractor's Cost of the Work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 11.4.4 Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.
- 11.4.5 Supplemental costs including the following:
 - 11.4.5.1 The proportion of necessary transportation, travel and subsistence expenses of the Contractor's employees incurred in discharge of duties connected with the Work.
 - 11.4.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of the Contractor.
 - 11.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from the Contractor or others in accordance with rental agreements approved by the Owner with the advice of the Engineer, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof-all in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

- 11.4.5.4 Sales, consumer, use of similar taxes related to the work, and for which the Contractor is liable, imposed by Laws and Regulations.
 - 11.4.5.5 Deposits lost for causes other than negligence of the Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - 11.4.5.6 Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by the Contractor in connection with the performance and furnishing of the work (except losses and damages within the deductible amounts of property insurance established by the Owner in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of the Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining the Contractor's Fee. If, however, any such loss or damage requires reconstruction and the Contractor is placed in charge thereof, the Contractor shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.
 - 11.4.5.7 The cost of utilities, fuel and sanitary facilities at the site.
 - 11.4.5.8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
 - 11.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by the Owner in accordance with paragraph 5.9.
- 11.5 The term Cost of Work shall not include any of the following:
- 11.5.1 Payroll costs and other compensation of the Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by the Contractor whether at the site or in the Contractor's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4-all of which are to be considered administrative costs covered by the Contractor's Fee.
 - 11.5.2 Expenses of the Contractor's principal and branch offices other than the Contractor's office at the site.
 - 11.5.3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments.

- 11.5.4 Cost of premiums for all Bonds and for all insurance whether or not the Contractor is required by the contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).
- 11.5.5 Costs due to the negligence of the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.
- 11.5.6 Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

CONTRACTOR'S FEE:

- 11.6 The Contractor's Fee allowed to the Contractor for overhead and profit shall be determined as follows:
 - 11.6.1 a mutually acceptable fixed fee; or if none can be agreed upon.
 - 11.6.2 a fee based on the following percentages of the various portions of the Cost of the Work:
 - 11.6.2.1 for costs incurred under paragraph 11.4.1 and 11.4.2, the Contractor's shall be fifteen percent;
 - 11.6.2.2 for costs incurred under paragraph 11.4.3, the Contractor's Fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a Fee, the maximum allowable to the Contractor on account of overhead and profit of all Subcontractors shall be fifteen percent;
 - 11.6.2.3 no fee shall be payable on the basis of costs itemized under paragraphs 11.4.4, 11.4.5 and 11.5;
 - 11.6.2.4 the amount of credit to be allowed by the Contractor to the Owner for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in the Contractor's Fee by an amount equal to ten percent of the net decrease; and
 - 11.6.2.5 when both additions and credits are involved in any one change, the adjustment in the Contractor's Fee shall be computed on the basis of the net change in accordance with paragraphs 11.6.2.1 through 11.6.4, inclusive.
- 11.7 Whenever the cost of any Work is to be determined pursuant to paragraph 11.4 or 11.5, the Contractor will submit in form acceptable to the Engineer an itemized cost breakdown together with supporting data.

CASH ALLOWANCES:

- 11.8 It is understood that the Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to the Engineer. The Contractor agrees that:

11.8.1 The allowances include the cost to the Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

11.8.2 The Contractor's costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate Change Order will be issued as recommended by the Engineer to reflect actual amounts due the Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

12.0 CHANGE OF CONTRACT TIME

12.1 A Change Order or a Written Amendment may only change the Contract Time. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered by the party making the claim to the other party and to the Engineer promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless the Engineer allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims, for adjustment in the Contract Time, shall be determined by the Engineer, in accordance with paragraph 9.11, if the Owner and the Contractor cannot otherwise agree. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 12.1.

12.2 The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of the Contractor if a claim is made therefore as provided in paragraph 12.1. Such delays shall include, but not be limited to, acts or neglect by the Owner or others performing additional work as contemplated by Article 7, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

12.3 All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 12 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) for delay by either party.

13.0 WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

WARRANTY AND GUARANTEE:

13.1 The Contractor warrants and guarantees to the Owner and the Engineer that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to the Contractor. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 13.

ACCESS TO WORK:

- 13.2 The Engineer and Engineer's representatives, other representatives of the Owner, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing, the Contractor shall provide proper and safe conditions for such access.

TESTS AND INSPECTIONS:

- 13.3 The Contractor shall give the Engineer timely notice of readiness of the Work for all required inspections, tests or approvals.
- 13.4 If Laws or Regulations of any public body having jurisdiction require any Work (of part thereof) to specifically be inspected, tested or approved, the Contractor shall assume full responsibility therefore, pay all costs in connection herewith and furnish the Engineer the required certificates of inspection, testing or approval. The Contractor shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the Owner's or the Engineer's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to the Contractor's purchase thereof for incorporation in the Work. The cost of all inspections, tests, and approvals, in addition to the above, which are required by the Contract Documents, shall be paid by the Owner (unless otherwise specified).
- 13.5 All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to the Owner and the Contractor (or by the Engineer if so specified).
- 13.6 If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of the Engineer, it must, if requested by the Engineer, be uncovered for observation. Such uncovering shall be at the Contractor's intention to cover the same and the Engineer has not acted with reasonable promptness in response to such notice.
- 13.7 Neither observations by the Engineer nor inspections, tests or approvals by others shall relieve the Contractor from the Contractor's obligations to perform the Work in accordance with the Contract Documents.

UNCOVERING WORK:

- 13.8 If any Work is covered contrary to the written request of the Engineer, it must, if requested by the Engineer, be uncovered for the Engineer's observation and replaced at the Contractor's expense.
- 13.9 If the Engineer considers it necessary or advisable that covered Work be observed by the Engineer or inspected or tested by others, the Contractor, at the Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as the Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, the Contractor shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and the Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Article 11. If, however, such Work is not found to be defective, the Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the

amount or extent thereof, the Contractor may make a claim therefore as provided in Article 11 and 12.

OWNER MAY STOP THE WORK:

- 13.10 If the Work is defective, or the Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, the Owner may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other party.

CORRECTION OR REMOVAL OF DEFECTIVE WORK:

- 13.11 If required by the Engineer, the Contractor shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by the Engineer, remove it from the site and replace it with non-defective Work. The Contractor shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

ONE-YEAR CORRECTION PERIOD:

- 13.12 If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws and Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any work is found to be defective, the Contractor shall promptly, without cost to the Owner and in accordance with the Owner's written instructions, either correct such defective Work, or, if the Owner has rejected it, remove it from the site and replace it with non-defective Work. If the Contractor does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, the Owner may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals) will be paid by the Contractor. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

ACCEPTANCE OF DEFECTIVE WORK:

- 13.13 If, instead of requiring correction or removal and replacement of defective Work, the Owner (and, prior to the Engineer's recommendation of final payment, also the Engineer) prefers to accept it, the Owner may do so. The Contractor shall bear all direct, indirect and consequential costs attributable to the Owner's evaluation of and determination to accept such defective Work (such costs to be approved by the Engineer as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to the Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the Owner may make a

claim therefor as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by the Contractor to the Owner.

OWNER MAY CORRECT DEFECTIVE WORK:

13.14 If the Contractor fails within a reasonable time after written notice of the Engineer to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by the Engineer in accordance with paragraph 13.11, or if the Contractor fails to perform the Work in accordance with the Contract Documents, or if the Contractor fails to comply with any other provision of the Contract Documents, the Owner may, after seven days' written notice to the Contractor, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph the Owner may exclude the Contractor from all or part of the site, take possession of all or part of the Work, and suspend the Contractor's services related thereto, take possession of the Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which the Owner has paid the Contractor but which are stored elsewhere. The Contractor shall allow the Owner, the Owner's representatives, agents and employees such access to the site as may be necessary to enable the Owner to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of the Owner in exercising such rights and remedies will be charged against the Contractor in an amount approved as to reasonableness by the Engineer, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and the Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, the Owner may make a claim therefore as provided in Article 11. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of the Contractor's defective Work. The Contractor shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the Owner of the Owner's rights and remedies hereunder.

14.0 PAYMENTS TO CONTRACTOR AND COMPLETION

SCHEDULE OF VALUES:

14.1 The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to the Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

APPLICATION FOR PROGRESS PAYMENT:

14.2 At least twenty days before each progress payment is scheduled (but not more often than once a month), the Contractor shall submit to the Engineer for review an Application for Payment filled out and signed by the Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that the Owner has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect the Owner's interest therein, all of

which will be satisfactory to the Owner. The amount of retainage with respect to progress payments will be as stipulated in the Supplementary Conditions.

CONTRACTOR'S WARRANTY OF TITLE:

- 14.3 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to the Owner no later than the time of payment free and clear of all Liens.

REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT:

- 14.4 The Engineer will, within five days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to the Owner, or return the Application to the Contractor indicating in writing the Engineer's reasons for refusing to recommend payment. In the latter case, the Contractor may make the necessary corrections and resubmit the Application. Ten days after presentation of the Application for Payment with the Engineer's recommendation, the amount recommended will (subject to the provisions of the last sentence of paragraph 14.7) become due and when due will be paid by the Owner to the Contractor.
- 14.5 The Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on the Engineer's review of the Application for Payment and the accompanying date and schedules that the work has progressed to the point indicated; that, to the best of the Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work, as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation); and that the Contractor is entitled to payment of the amount recommended. However, by recommending any such payment the Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to the Engineer in the Contract Documents or that there may not be other matters or issues between the parties that might entitle the Contractor to be paid additionally by the Owner or the Owner to withhold payment to the Contractor.
- 14.6 The Engineer's recommendation of final payment will constitute an additional representation by the Engineer to the Owner that the conditions precedent to the Contractor's being entitled to final payment as set forth in paragraph 14.13 have been fulfilled.
- 14.7 The Engineer may refuse to recommend the whole or any part of any payment if, in the Engineer's opinion, it would be incorrect to make such representations to the Owner. The Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in the Engineer's opinion to protect the Owner from loss because:
- 14.7.1 the Work is defective, or completed Work has been damaged requiring correction or replacement,
- 14.7.2 the contract Price has been reduced by Written Amendment or Change Order,

14.7.3 the Owner has been required to correct defective Work or complete Work in accordance with paragraph 13.14, or

14.7.4 of the Engineer's actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.9 inclusive.

The Owner may refuse to make payment of the full amount recommended by the Engineer because claims have been made against the Owner on account of the Contractor's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling the Owner to a set-off against the amount recommended, but the Owner must give the Contractor immediate written notice (with a copy to the Engineer) stating the reasons for such action.

SUBSTANTIAL COMPLETION:

14.8 When the Contractor considers the entire Work ready for its intended use the Contractor shall notify the Owner and the Engineer in writing that the entire Work is substantially complete (except for items specifically listed by the Contractor as incomplete) and request that the Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, the Owner, the Contractor and the Engineer shall make an inspection of the Work to determine the status of completion; the Engineer will notify the Contractor in writing giving the reasons therefore. If the Engineer will prepare and deliver to the Owner a tentative certification of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. The owner shall have seven days after receipt of the tentative certificate during which to make written objection to the Engineer will within fourteen days after submission of the tentative certificate to the Owner notify the Contractor in writing, stating the reasons therefore. If, after consideration of the Owner's objections, the Engineer considers the Work substantially complete, the Engineer will within said fourteen days execute and deliver to the Owner and the Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as the Engineer believes justified after consideration of any objections from the Owner. At the time of delivery of the tentative certificate of Substantial Completion the Engineer will deliver to the Owner and the Contractor a written recommendation as to division of responsibilities pending final payment between the Owner and the Contractor with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties.

Unless the Owner and the Contractor agree otherwise in writing and so inform the Engineer prior to the Engineer's issuing the definitive certificate of Substantial Completion, the Engineer's aforesaid recommendation will be binding on the Owner and the Contractor until final payment.

14.9 The Owner shall have the right to exclude the Contractor from the Work after the date of Substantial Completion, but the Owner shall allow the Contractor reasonable access to complete or correct items on the tentative list.

PARTIAL UTILIZATION:

14.10 Use by the Owner of any finished part of the Work, which has specifically been identified in the Contract Documents, or which the Owner, the Engineer and the Contractor agree constitutes a separately functioning and useable part of the Work that can be used by the Owner without significant interference with the Contractor's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1 The Owner at any time may request the Contractor in writing to permit the Owner to use any such part of the Work which the Owner believes to be ready for its intended use and substantially complete. If the Contractor agrees, the Contractor will certify to the Owner and the Engineer that said part of the Work is substantially complete and request the Engineer to issue a certificate of Substantial Completion for that part of the Work. The Contractor at any time may notify the Owner and the Engineer in writing that the Contractor considers any such part of the Work ready for its intended use and substantially complete and request the Engineer to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, the Owner, the Contractor and the Engineer shall make an inspection of that part of the Work to determine its status of completion. If the Engineer does not consider that part of the Work to be substantially complete, the provisions of paragraph 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.10.2 The Owner may at any time request the Contractor in writing to permit the Owner to take over operation of such part of the Work although it is not substantially complete. A copy of such request will be sent to the Engineer and within a reasonable time thereafter the Owner, the Contractor and the Engineer shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If the Contractor does not object in writing to the Owner and the Engineer that such part of the Work is not ready for separate operation by the Owner, the Engineer will finalize the list of items to be completed or corrected and will deliver such list to the Owner and the Contractor together with a written recommendation as to the division of responsibilities pending final payment between the Owner and the Contractor with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work which will become binding upon the Owner and the Contractor at the time when the Owner takes over such operation (unless they shall have otherwise agreed in writing and so informed the Engineer). During such operation and prior to Substantial Completion of such part of the Work, the Owner shall allow the Contractor reasonable access to complete or correct items on said list and to complete other related Work.

14.10.3 No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

FINAL INSPECTION:

14.11 Upon written notice from the Contractor that the entire Work or an agreed portion thereof is complete, the Engineer will make a final inspection with the Owner and the Contractor and will notify the Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. The Contractor shall immediately take such measures as are necessary to remedy such deficiencies.

FINAL APPLICATION FOR PAYMENT:

14.12 After the Contractor has completed all such corrections to the satisfaction of the Engineer and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 6.19) and other documents-all as required by the Contract Documents, and after the Engineer has indicated that the Work is acceptable (subject to the provisions of paragraph 14.16),

the Contractor's obligation to perform the work in accordance with the Contract Documents (except as provided in paragraph 14.16).

WAIVER OF CLAIMS:

14.16.1 a waiver of all claims by the Owner against the Contractor, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.11 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by the Owner of any rights in respect of the Contractor's continuing obligations under the Contract Documents; and

14.16.2 a waiver of all claims by the Contractor against the Owner other than those previously made in writing and still unsettled.

15.0 SUSPENSION OF WORK AND TERMINATION

OWNER MAY SUSPEND WORK:

15.1 The Owner may, at any time and without cause suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to the Contractor and the Engineer which will fix the date on which Work will be resumed. The Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension of the Contractor makes an approved claim therefore as provided in Articles 11 and 12, with the exception of the suspension of Work by the Owner for the purpose of a winter layover, such suspension by the Owner will be determined by the Owner and the Engineer, and will not be subject to any increase in the Contract Price of Time.

OWNER MAY TERMINATE:

15.2 Upon the occurrence of any one or more of the following events:

15.2.1 if the contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if the Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

15.2.2 if a petition is filed against the Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against the Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

15.2.3 if the Contractor makes a general assigned for the benefit of creditors;

15.2.4 if a trustee, receiver, custodian or agent of the Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of the Contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of the Contractor's creditors;

15.2.5 if the Contractor admits in writing an inability to pay its debts generally as they become due;

- 15.2.6 if the Contractor persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as revised from time to time);
- 15.2.7 if the Contractor disregards Laws or Regulations of any public body having jurisdiction;
- 15.2.8 if the Contractor disregards the authority of the Engineer; or
- 15.2.9 if the Contractor otherwise violates in any substantial way any provisions of the Contract Documents;

The Owner may, after giving the Contractor (and the surety, if there be one) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of the Contractor, exclude the Contractor from the site and take possession of the Work and of all Contractor's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by the Contractor (without liability to the Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which the Owner has paid the Contractor but which are stored elsewhere, and finish the Work as the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) such excess will be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner.

Such costs incurred by the Owner will be approved as to reasonableness by the Engineer and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph the Owner shall not be required to obtain the lowest price for the Work performed.

- 15.3 Where the Contractor's services have been so terminated by the Owner, the termination will not affect any rights or remedies of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due the Contractor by the Owner will not release the Contractor from liability.
- 15.4 Upon seven days' written notice to the Contractor and the Engineer, the Owner may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, the Contractor shall be paid for all Work executed and any expense sustained plus reasonable termination expenses, which will include, but not be limited to, direct, indirect and consequential costs (including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs).

CONTRACTOR MAY STOP WORK OR TERMINATE:

- 15.5 If, through no act or fault of the Contractor, the Work is suspended for a period of more than ninety days by the Owner or under an order of court or other public authority, or the Engineer fails to act on any Application for Payment within thirty days after it is submitted, or the Owner fails for thirty days to pay the Contractor any sum finally determined to be due, then the Contractor may, upon seven days' written notice to the Owner and the Engineer, terminate the Agreement and recover from the Owner payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if the Engineer has failed to act on an Application for Payment or the Owner has failed to make any payment as aforesaid,

the Contractor may upon seven days' written notice to the Owner and the Engineer stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve the Contractor of the obligations under paragraph 6.29 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with the Owner.

16.0 ARBITRATION

- 16.1 All claims, disputes and other matters in question between the Owner and the Contractor arising out of, or relating to the Contract Documents or the breach thereof (except for claims which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining subject to the limitations of this Article 16. This agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this Article 16 will be specifically enforceable under the prevailing law of any court having jurisdiction.
- 16.2 No demand for arbitration of any claim, dispute or other matter that is required to be referred to the Engineer initially for decision in accordance with paragraph 9.11 will be made until the earlier of (a) the date on which the Engineer has rendered a decision or (b) the tenth day after the parties have presented their evidence to the Engineer if a written decision has not been rendered by the Engineer before that date. No demand for arbitration of any such claim, dispute or other matter will be made later than thirty days after the date on which the Engineer has rendered a written decision in respect thereof in accordance with paragraph 9.11; and the failure to demand arbitration within said thirty days' period shall result in Engineer's decision after arbitration proceedings have been initiated, such decision may be entered as evidence but will not supersede the arbitration proceedings, except where the decision is acceptable to the parties concerned. No demand for arbitration of any written decision of the Engineer rendered in accordance with paragraph 9.10 will be made later than ten days after the party making such demand has delivered written notice of intention to appeal as provided in paragraph 9.10.
- 16.3 Notice of the demand for arbitration will be filed in writing with the other party to the Agreement and with the other party to the Agreement and with the American Arbitration Association, and a copy will be sent to the Engineer for information. The demand for arbitration will be made within the thirty-day or ten-day period specified in paragraph 16.2 as applicable, and in all other cases within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- 16.4 No arbitration arising out of or relating to the Contract Documents shall include by consolidation, joinder or in any other manner any other person or entity (including the Engineer, the Engineer's agents, employees or consultants) who is not a party to this contract unless:
- 16.4.1 the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration,
- 16.4.2 such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceeding, and

16.4.3 the written consent of the other person or entity sought to be included and of the Owner and the Contractor has been obtained for such inclusion, which consent shall make specified reference to this paragraph; but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

16.5 The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act (9 U.S.C. Sect. 10, 11).

17.0 MISCELLANEOUS

17.1 Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

COMPUTATION OF TIME:

17.2.1 When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.2.2 A calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day.

GENERAL:

17.3 Should the Owner or the Contractor suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

17.4 The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon the Contractor by paragraphs 6.30, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to the Owner and the Engineer there under, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representatives, warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Agreement.

SUPPLEMENTARY CONDITIONS

1.0 INSURANCE

The limits of liability for the insurance required by paragraph 5.3 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations: 5.3.1 and 5.3.2. Worker's Compensation, etc. under paragraphs 5.3.1 and 5.3.2 of the General Conditions:

- | | | |
|-----|---|--------------|
| (1) | State: | Statutory |
| (2) | Applicable Federal (e.g. Longshoreman`s): | Statutory |
| (3) | Employer's Liability: | \$100,000.00 |

5.3.3, 5.3.4, 5.3.5 and 5.3.6 Comprehensive General Liability (under paragraph 5.3.3 through 5.3.6 of the General Conditions):

- | | | |
|-----|--|------------------|
| (1) | Bodily Injury (including Completed operations and Products liability): | |
| | \$1,000,000.00 | Each Occurrence |
| | \$1,000,000.00 | Annual Aggregate |
| | Property Damage: | |
| | \$1,000,000.00 | Each Occurrence |
| | \$1,000,000.00 | Annual Aggregate |
| | or combined single limit of | \$1,000,000.00 |
| (2) | Property Damage liability Insurance will provide Explosion, Collapse and Underground coverages Where applicable. | |
| (3) | Personal Injury, with employment Exclusion deleted | |
| | \$1,000,000.00 | Annual Aggregate |

5.3.7 Comprehensive Automobile Liability:

- | | |
|-----------------------------|-----------------|
| Bodily Injury: | |
| \$1,000,000.00 | Each Person |
| \$1,000,000.00 | Each Occurrence |
| Property Damage: | |
| \$1,000,000.00 | Each Occurrence |
| or combined single limit of | \$1,000,000.00 |

The Contractual Liability required by paragraph 5.4 of the General Conditions should provide coverage for not less than the following amounts:

- | | | |
|-------|------------------|------------------|
| 5.4.1 | Bodily Injury: | |
| | \$1,000,000.00 | Each Occurrence |
| 5.4.2 | Property Damage: | |
| | \$1,000,000.00 | Each Occurrence |
| | \$1,000,000.00 | Annual Aggregate |

All references in the General Conditions to Owners liability and property damage insurance shall be amended to indicate that the Town of Cumberland has obtained all municipal insurance required by law, regulation or ordinance for a public body and guarantees to the Contractor that such insurance will be maintained for the life of the Agreement. The Town therefore, will not provide to the Contractor certificates and other evidence of insurance described or referred to in the following sections of the General Conditions:

Paragraph(s) 2.7
5.5
5.6
5.7
5.8
5.9
5.10
5.11.1
5.11.2
5.12
5.13
5.14
8.5

2.0 SALES TAXES

Paragraph 6.15 of the General Conditions shall be amended to indicate that in Materials and equipment purchased for installation under this contract are exempt from the Rhode Island Sales Tax. The exemption from the Sales Tax shall be taken into account by the Contractor during bidding.

3.0 RETAINAGE

Section 14 of the General Conditions shall be amended to indicate that the Owner will retain 10% of the amount of each payment until final completion and acceptance of work covered by this contract in order to insure proper performance with contract provisions. At the time the contract is 60% complete the retainage may be reduced to 5% at the Owner's discretion.

4.0 OWNER'S INSPECTION

Inspectors shall be authorized to inspect all work done and materials furnished. Such inspection may extend to all parts of the work and to the preparation or manufacture of the materials to be used. The presence or absence of an inspector shall not relieve the Contractor from any requirements of the Contract. In case of any dispute arising between the Contractor and the inspector as to materials furnished or the manner in which the work is being executed, the inspector shall have the authority to reject material or suspend work until the Owner has decided the question. The inspector shall not be authorized to revoke, alter, enlarge, relax, or release any requirement of these specifications, nor to approve or accept any portion of the work, and specifications. The inspector shall in no case act as foreman or perform other duties for the Contractor, or interfere with the management of the work by the latter. Any advice, which the inspector may give the Contractor, shall in no way be construed as binding the Owner or the Engineer in any way, nor releasing the Contractor from the fulfillment of the terms of the Contract.

5.0 EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

During performance of the Work of the Contract, the Contractor will be required to follow an equal employment opportunity program complying with provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.

Approval of the bidder's proposed equal employment opportunity program by the Owner and by the governmental agencies having jurisdiction will be a prerequisite to award of the Contract.

To be acceptable, the proposed equal employment opportunity program must contain the following stipulations, except as otherwise approved in advance.

- A. There shall be no discrimination against any employee or applicant for employment because of race, creed, color, sex, age, religion, handicap, or national origin. Affirmative action will be taken to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex, age, religion, handicap, or national origin. Such action shall include, but not be limited to, the following:
- (1) Employment, upgrading, demotion, or transfer;
 - (2) Recruitment or recruitment advertising;
 - (3) Layoffs or terminations;
 - (4) Rates of Pay or other forms of compensation; and
 - (5) Selection for training, including apprenticeship.
- Notice shall be posted in conspicuous places, available to employees and applicants for employment, setting forth the provisions of this nondiscrimination clause.
- B. All solicitations or advertisement for employees shall state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, age, religion, handicap, or national origin.
- C. Contractors shall send to each labor union or representative of workers with which they have a collective bargaining agreement or other contract of understanding, a notice to be provided advising the labor union of worker's' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and they shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. Contractors shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and the rules, regulations, and relevant orders of the Secretary of Labor.
- E. Contractors shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto as required by the Owner, for purposes of investigation to ascertain compliance with such rules, regulations, and orders. The contractors shall furnish, copies, as requested.
- F. In the event of contractor's noncompliance with the nondiscrimination clauses of their contracts, or with any of such rules, regulations, or orders, their contracts may be cancelled, terminated, or suspended in whole or in part, and they may be declared ineligible for further contracts on governmentally assisted construction work. Other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The contractors shall include the provisions of paragraphs "A" through "G" in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.

Other programs in satisfactory use may be substituted in lieu of the basic program delineated above, subject to the approval of the Owner and all governmental agencies having jurisdiction.

6.0 RESPONSIBILITIES OF THE CONTRACTOR

Except as otherwise specifically stated in the Contract Documents, and Technical Specifications, the Contractor shall provide and pay for all materials, tools, labor, equipment, water, light, heat, power, telephone, transportation, superintendence, temporary construction of every nature, charges, levies, fees or other expenses, and all other services and facilities of every nature whatsoever necessary for the performance of the Contract and to deliver all improvements embraced in this Contract complete in every respect within the specified time.

Unless otherwise specified herein, all materials, workmanship, methods and practices utilized to perform the work embraced within the Contract shall conform to current Cumberland Department of Public Works Standards and the Rhode Island Standard Specifications for Road and Bridge Construction; Revision of 1994 with latest revisions or addenda.

7.0 SANITARY WASTE

Adequate sanitary conveniences for the use of workmen shall be provided within the Contractor's field office and/or in temporary, portable field enclosures that comply with the requirements of local and state health authorities. If portable field enclosures are provided, they shall be located or relocated as directed by the Owner. Sanitary waste shall be treated and disposed of in a manner satisfactory to and as directed by the Engineer and the local and state health authorities; and under no circumstances shall sanitary wastes be allowed to flow on the surface of the ground.

8.0 INTOXICATING LIQUORS

The Contractor shall not sell and shall neither permit nor suffer the introduction or use of intoxicating liquors upon or about the work embraced in this Contract.

9.0 PROVISIONS FOR TRAFFIC

The Contractor shall not close or obstruct any portion of a street without obtaining permits therefore from the proper authorities. If any street or private way shall be rendered unsafe by the Contractor's operations, he shall make such repairs or provide such temporary ways or guards as shall be acceptable to the Owner.

Streets, roads, private ways, and walks shall be maintained passable by the Contractor at his expense, and the Contractor shall assume full responsibility for the adequacy and safety of the provisions made. He shall conduct his construction operations such that interference with the flow of vehicular and pedestrian traffic will be held to a minimum.

The Contractor shall cooperate in every way possible to maintain a flow of traffic through the site. The Contractor shall notify the Fire Department when any street is to be closed regardless of the length of time or time of day. All detours shall be signed, lighted, and barricaded as directed by the Owner or indicated on the drawings.

10 ABBREVIATIONS

Where any of the following abbreviations are used in the specifications, they shall have the meaning set forth opposite each, and their reference shall apply to the latest amendment or revision of same, unless otherwise specified.

AASHTO (AASHO)	- American Association of State Highway Transportation Officials
AAN	- American Association of Nurserymen
ASLA	- American Society of Landscape Architects
ACI	- American Concrete Institute
AISC	- American Institute of Steel Construction

ASA	- American Standards Association
ASTM	- American Society for Testing Materials
ASCE	- American Society for Civil Engineers
AWWA	- American Water Works Association
AWS	- American Welding Society
FHA	- Federal Highway Administration: U.S. Department of Transportation
FSS	- Federal Specifications and Standards
	- Federal Supply Service and the General Services Admin., Wash., D.C.
NBS	- National Bureau of Standards
RIDOT	- Rhode Island Department of Transportation
USS Gauge	- United States Standard Gauge

SECTION 07100

PERFORMANCE SPECIFICATION
LEAKAGE REPAIR and WATERPROOFING

PART 1 – DESCRIPTION

- A. Background: The performance specification had been prepared based on an independent the field inspection and investigation of the infiltration and leakage observed within select areas of the Hayden Meeting Center, and the proposed means and methods recommended by a qualified waterproofing and roofing company, who performed the site investigation, as arranged at an earlier date by the Cumberland Library facilities maintenance staff.
1. Reference is made to the Appendix of the Contract Specifications for photographs of the existing conditions and existing building walls associated with this project.
- B. The proposed Scope of Work anticipated for the leakage repair and waterproofing to prevent water intrusion and leakage along the upper rooftop walls of the Hayden Center includes:
1. The removal of approximately seventy-five (75) feet of the existing EIF exterior base wall section to facilitate the waterproofing work. One (1) foot of the existing wall base section of EIF shall be removed, as measured from the existing EDPM rubber roof membrane.
 2. The furnishing and installation of new “thru-wall” stainless steel flashing in conjunction with the counter-flashing with an adhesive style (peel-and-stick) membrane within these limits of work.
 3. The restoration (replacement) of EIF base wall sections within these limits, which will include making provisions for weep holes at three (3) foot intervals on center.

PART 2 – MATERIALS

- A. Flashing: Metal flashing or metal counter flashing shall be stainless steel of the material type and thickness (gages) required for the proposed work and shall be in accordance with the local Building Codes. Fasteners, mastic sealants, or other adhesives, as applicable, shall be as recommended by the metal flashing manufacturer.
- B. Adhesive Counter Flashing: Adhesive ‘Peel-and-Stick’ style flashing shall be the butyl type of the size(widths) to suitably adhere and cover the new flashing at the required seams and/or joint locations. The adhesive membrane shall be compatible with the stainless steel flashing installed for the work.
- C. Exterior Insulation and Finish System (EIFS) Material: The replacement EIF material shall be consistent with the type of EIFS construction for the existing building structure. The texture and color shall be compatible with the existing façade and reasonably match and blend with the existing color.

- D. All appurtenant materials, including adhesives, fasteners, sealers, other metal accessories, as required for the work, are considered to be included in the overall scope of work, and shall be suitable for use with the above-reference principle material components of the work, and shall be in accordance with the manufacturer's recommendations for same.

PART 3 –EXECUTION

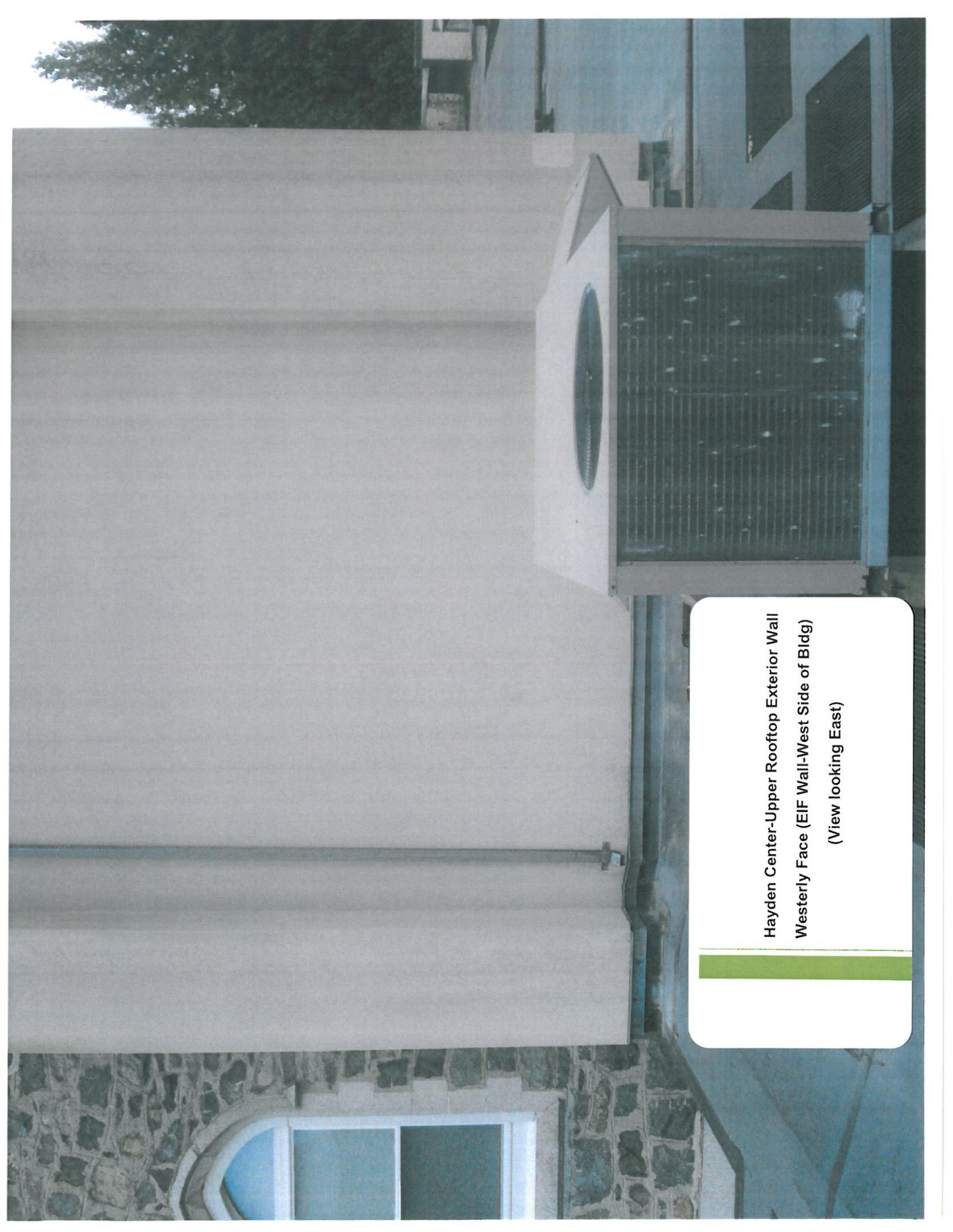
- A. Temporary Facilities and Controls: The Contractor shall furnish, install and maintain all enclosures, tarpaulins, coverings, or other measures to protect the work during interim periods of inclement weather. Further, the Contractor shall be responsible for providing and maintaining temporary barriers, guardrails or other barricades to protect workmen or other persons accessing the rooftop area of the building in accordance with OSHA guidelines and standards. Further, the Contractor shall ensure that workmen or other persons or pedestrian traffic at ground level are protected from the above rooftop work.
- B. The existing EIF base wall section shall be removed in its entirety within the specified limits to facilitate the proposed waterproofing work. Remove and dispose the existing wall base sections and clean and prepare the underlying surfaces to receive the new flashing. The Contractor shall exercise care in the removal of the wall so as to prevent damage to any pipe penetrations, appurtenances, or other building attachments that are within or are adjacent to the limits of the EIF wall removal.
- C. The new "thru-wall" stainless flashing will be installed within the specified limits, and will be turned-up at the existing door jambs and at any interior corners encountered during the work.
- D. The adhesive style "Peel-and-Stick" membrane will be installed as counter flashing for the new stainless steel flashing.
- E. The restoration and re-installation of the new EIFS wall section shall be performed in accordance the standard EIFS construction techniques to suitably prepare the concrete or masonry surfaces, and install the required insulation boards, meshes and final coatings. Proper blocking shall be provided to adequately accommodate any plumbing, electrical or other penetrations within the limits of work. All joints, seams, or terminal ends, as applicable, shall be suitably waterproofed to prevent the intrusion of water.
- F. As part of the quality assurance and waterproofing efforts associated with this project, the Contractor shall perform a field water test to determine if water is intruding through the granite façade of the exterior wall located on the easterly side of the building.

END OF SECTION

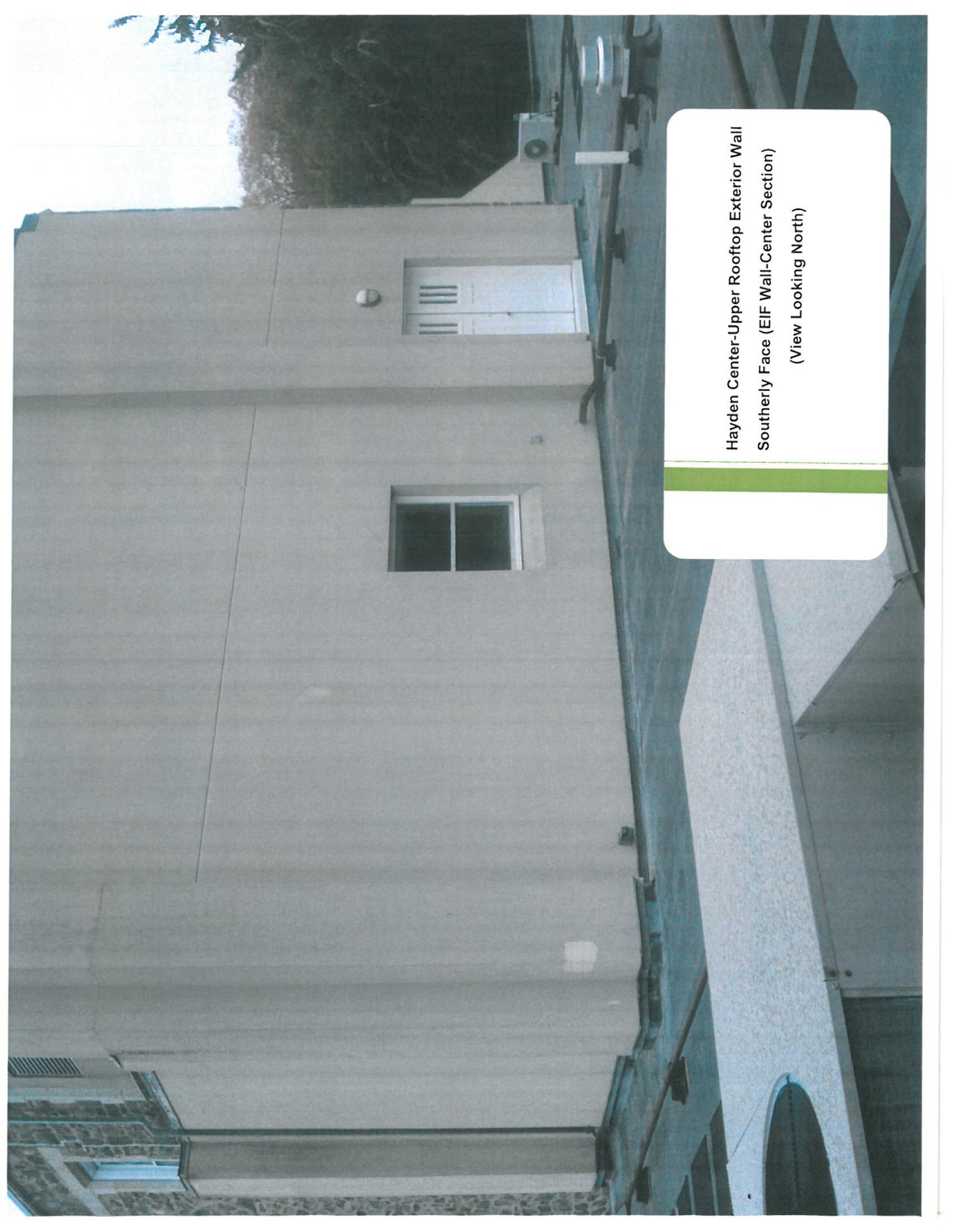
**CUMBERLAND LIBRARY HAYDEN CENTER
ROOF and WALL LEAKAGE REPAIR and WATERPROOFING**

APPENDIX

Photographs - Existing Conditions

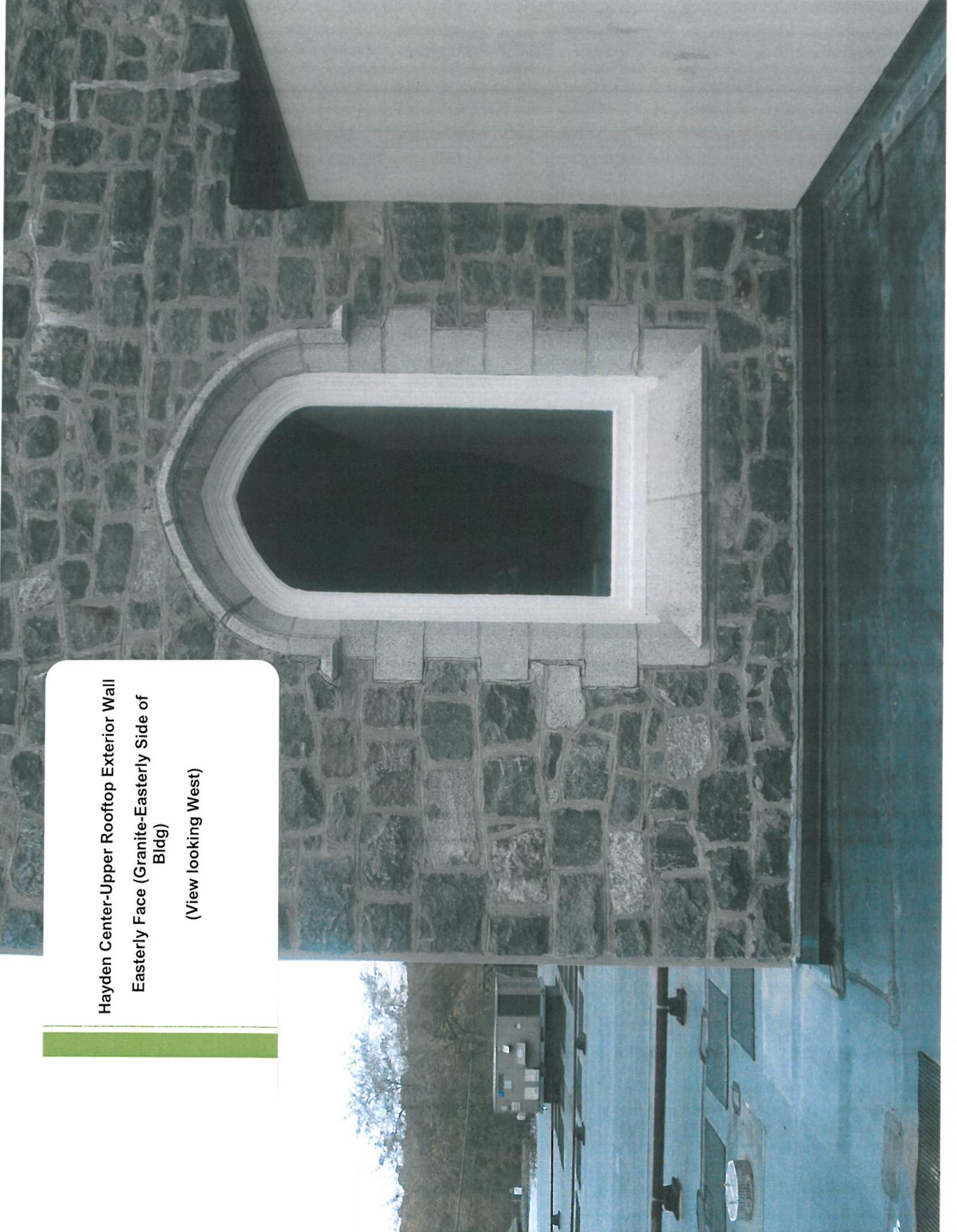
A photograph showing a rooftop exterior wall. The wall is light-colored and has a large, dark-colored air conditioning unit mounted on it. The unit has a circular fan on the left side and a large, dark grille on the right. The wall is part of a building with a stone base and a window with a white frame. The sky is blue with some clouds.

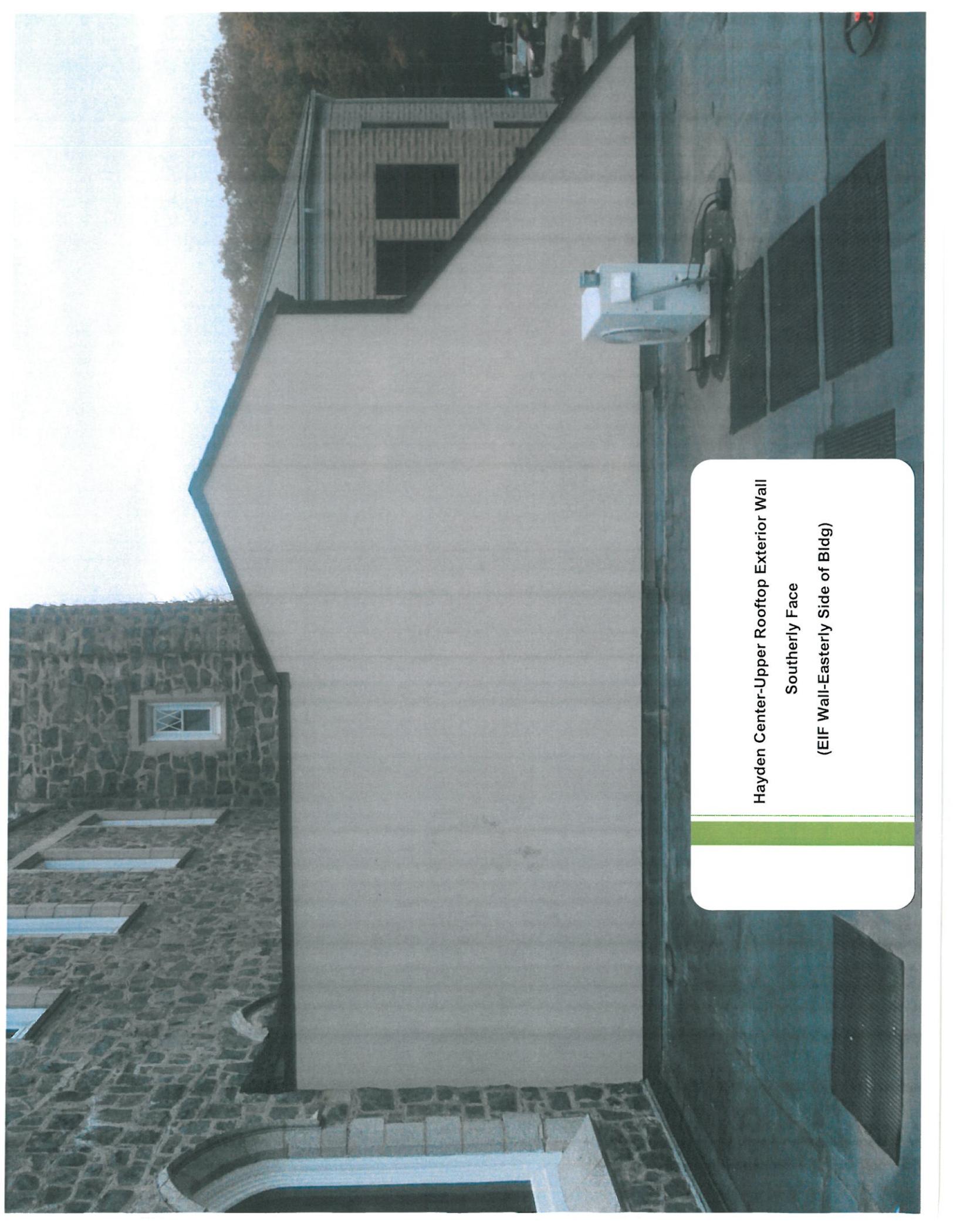
Hayden Center-Upper Rooftop Exterior Wall
Westerly Face (EIF Wall-West Side of Bldg)
(View looking East)



Hayden Center-Upper Rooftop Exterior Wall
Southerly Face (EIF Wall-Center Section)
(View Looking North)

Hayden Center-Upper Rooftop Exterior Wall
Easterly Face (Granite-Easterly Side of
Bldg)
(View looking West)





Hayden Center--Upper Rooftop Exterior Wall
Southerly Face
(EIF Wall--Easterly Side of Bldg)